



## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 15 SEPTEMBER 2017

#### LICENSING ACT 2003: PECKHAM FOOD & WINE , 176 PECKHAM HIGH STREET, LONDON SE15 5EG - REVIEW

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 PECKHAM Food and Wine, 176 Peckham High Road, London SE15 5EG 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**

The reasons for this decision are as follows:

The licensing sub-committee heard from the trading standards officer who advised that the licence to the premises Peckham Food and Fine allows alcohol to be sold 24 hours per day, seven days per week but does require there to be a personal licence holder on the premises and on duty at all times that alcohol is supplied (condition 341). During the course of trading standards investigation into the premises, the premises licence holder and designated premises supervisor (DPS) was Kiran Israr ("KI"). The business operates under Peckham Foods and Wines Ltd when there were three female directors, KI, SY and SI. Following a complaint from a member of the public about alleged counterfeit cigarettes being bought from this premise, trading standards carried out a joint visit with the Metropolitan Police on 23 November 2016 to check compliance with the premise licence, trading standards legislation and other criminality such as employing illegal workers.

During that visit a cupboard was discovered at the back of the shop that contained a single mattress. There was a lockable door and the "cupboard" had a toilet at the back. There were no windows and the floor was bare concrete. There was a small electric heater on the floor in addition to a fan. Two men were sleeping there. One was on the mattress and one was on the floor. Both were arrested in respect of immigration matters. Behind the counter was a personal licence holder, AG. A bottle opener was behind the counter which was seized by the police as suspected at being used to open bottles of alcohol contrary to condition 125 of the premises licence. This condition is intended to stop/reduce street drinking, which is a problem in the vicinity. No training records were available for inspection in breach of condition 326 of the premises licence. During the course of this investigation, no records were ever made available to trading standards making it reasonable to assume no age verification scheme was in operation and/or no training had been given to workers.

During the course of this inspection, trading standards found 10 x "Apple" style phone chargers on sale, identified as counterfeit. No purchase invoices have been supplied to trading standards for these items. During this visit AA arrived at the shop stating that he was the manager; he gave exactly the same home address as AG.

Trading standards have been concerned for a significant time of the sale of super strength beers, lagers and ciders because of the harm they cause to those drinking them, which generally have serious alcohol addiction and the anti social behaviour and crime that often goes with it. The government has sought to use price as a way of reducing consumption and therefore drinks with an ABV of 7.5% and above attract a proportionately higher duty. Trading standards have identified this to be a problem in Southwark with retailers often offer these drinks for sale without any price being displayed, (contrary to a requirement under pricing legislation) and then sell either below the duty price or below what a legitimate cash and carry would sell it to a retailer for, which suggests retailers have obtained items from an illegal source where duty has been evaded. There was a significant quantity and variety of these drinks offered for sale at this premise but no prices were displayed. There was also a significant quantity of those drinks near to the cupboard referred to earlier. The officer therefore served a notice requiring the business to reduce traceable invoices for these drinks.

A further visit was carried out by trading standards and the police on 8 February 2017. A test purchase was made of Carlsberg Special Brew in advance of the visit. The Carlsberg Special Brew cans were not price marked. The seller ("NM"), sold the can for £1.40, being 25 pence above the duty price (duty for the year 2016-2017 was £1.15). Officers asked NM for his manager. NM immediately went to the back of the shop and locked an internal door preventing officers from gaining access. Police parked in a police vehicle immediately at the back of the shop and noted the rear door to the shop was trying to be opened. Eventually the internal door was opened and NM was identified as an illegal worker and was arrested. NM said he started at 6am and was paid £30 for an 8 hour shift, equating to less than £4.00 per hour. Checks showed he had breached a Visitor's Visa issued in 2006 and was not permitted to work and not authorised to sell alcohol – contrary to condition 101 of the premises licence.

On the premises, sleeping on the mattress in the cupboard, was one of the men arrested on 23 November 2016. It was evident there was clothing belonging to more than one person. The CCTV was not working properly. Concerning the price charged for the super strength beer, only some of the invoices have been produced. The sub-committee was invited to conclude that an unknown proportion had been acquired from illegal sources where duty had been evaded.

On 2 March 2017, trading standards visited the premise because the requested invoices had not been received. Two males were working behind the counter. AG, who produced his personal licence and one other who refused to give his details and left the shop. CCTV was still not working (breach of conditions 288 and 289). The manager, AA attended the premises, stating that he said he ran the business and had tried to email through the invoices to the officer, but had not been received as an incorrect email address had been used. These were later sent to the correct mail address, but found to be indecipherable. That email gave the senders name as "AM". AA stated that KI had very little to do with running the business. Examination of business invoices showed that a number of different individuals held accounts with cash and carry businesses.

On 5 April 2017 a further visit took place with trading standards and the police made. Another illegal worker was working in the shop. He was arrested for immigration offences. The CCTV was still not working (breach of conditions 288 and 289).

A further visit was carried out on 26 April 2017 when a test purchase of alcohol was made. AG was in the shop working behind the counter when the test purchase was made. AG again produced his personal licence but the Police carried out an immigration check on him. It transpired that from 12 December 2013 he had been an "absconder" and was duly arrested. Amongst other things, he was not permitted to work. Once again, the CCTV was not working (breach of conditions 288 and 289). The CCTV had been switched off, but even after switching it on, the CCTV was not fully operational.

On 20 May, trading standards carried out a further visit with Immigration Officers. AG was seen walking out of the shop. The immigration officers ran after him and arrested him. He returned to the shop and denied he had been working. The CCTV was checked and it was clear he had been working that day. The other person in the shop was "YS" who was stressed by the further visit and the responsibility of visits from various enforcement agencies. Another bottle opener was found on the counter by the till (breach of condition 125) and was seized

Trading standards advised that they had no confidence whatsoever with the premises licence holder and urged the licensing sub-committee to revoke the licence.

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 and other enforcement agencies. The officer highlighted that several different people had been working at the premises and that there has never been any person held accountable such as the DPS or licensee available at the premises to discuss the concerns regarding breaches or license conditions or other criminal activity. Because of the extent of offending, licensing as a responsible authority concluded that they had no faith that the licensing objective being promoted and fully supported the revocation of the licence.

The licensing sub-committee heard from an officer from the Home Office who confirmed that illegal workers had been encountered at the premises. As a result, a £20,000 civil penalty had been issued, initially incorrectly to AA, but this was rectified and re-issued to Peckham Food and Wine Limited. The officer confirmed that the current licence holder and DPS had made contact and a payment plan had been agreed. The office also confirmed that two of the three directors at that time had no valid leave

The licensing sub-committee heard from the representative for the current licence holder and DPS for the premises, albeit, the transfer application had been refused which the representative said would be appealed. The history of the premises as set out by the responsible officers was accepted and rather consider the various breaches, wished to concentrate on what could be offered to promote the licensing objectives. He reminded the committee that the purpose of a revocation was not to be punitive. Whilst his client had links with the previous owner (and DPS) in addition to the directors, it did not follow that his knew what was going on in the business. He did not know the extent his wife was involved. He pair were largely estranged and she was an individual in her own right. His client had been abroad for most of the last 12 months. His client was a personal licence holder and was of good character. Training had been provided to all staff and there was now currently three personal licence holders employed, with an additional two about to undertake the course. His client was now the sole director and sole shareholder of Peckham Food and Wine Limited. It was a matter to look at activities of concern and find a resolution which is both appropriate and proportionate.

A list of proposed conditions was submitted to the sub-committee and the responsible authorities. The schedule of conditions offered was largely no more than what a responsible operator should be already do. Whilst the licence holder could not be held account for any of the wrong-doing witnessed by trading standards, a period of suspension was also offered.

This was offered, not as a punitive measure, but as a deterrent to other operators. Because a 24 hour licence was extremely generous and that the 24 hour operation allowed illegal workers to gain temporary shelter, it was suggested that the premises may think it prudent to curb its operating hours. This was refused. When questioned on the super strength beers, lagers and ciders, the premises would only consider a ban on those with an ABV of 6.5 % and also, would seek the sale of the more premium brands.

During the course of this trading standards investigation, six visits were carried out with the premises and on all occasion illegal workers have been present. The premises has operated with a total disregard to the licensing objectives in addition to the law relating to the employment of workers both in terms of those having the right to work and the poor payment made. This licensing sub-committee agree that the premises has effectively operated as a modern form of slavery with appalling sleeping conditions also being provided. By operating a 24 hour, seven days a week business, the shop front door is never closed meaning people can come and go at any time with some taking refuge. The then licence holder and DPS has not engaged with the authorities and have shown little interest or involvement with the day to day running of the business and has allowed and/or instructed the business to be run in this illegal manner.

Whilst the current licence holder and DPS claims that he is now the sole director and shareholder, Companies House records shows the extremely regular movement of personnel in Peckham foods & Wine Limited. Some of the appointments and resignation have taken place on the same day. The licence holder has links with the previous directors, and these persons have been involved in the poor management and illegal practices at the premises of crime and employing illegal workers. He may show as being the sole director and shareholder of the company, but the history of this company does not give this licensing sub-committee confidence that it will remain in his name, particularly in view of the dormant second company being incorporated and operating from the same premises. Further, the licence holder has failed to demonstrate a sufficient distance from these previous poor management practices, including the removal of all previous staff, since it is noted that this same member of staff is a co-director of the second company operating from the premises, Ya Sir Minimarket Limited. In these circumstances, the premise licence is therefore revoked.

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; 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 September 2017

## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 22 JULY 2021

#### LICENSING ACT 2003: PECKHAM FOOD & WINE, 176 PECKHAM HIGH STREET, LONDON SE15 5EG

##### 1. Decision

That the application made by Mr. Abdul Aziz Umer for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG be refused.

##### 2. Reasons

This was an application made by Mr. Abdul Aziz Umer for a premises licence to be granted under section 17 of the Licensing Act 2003 in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG.

The licensing sub-committee heard from the applicant's representative who advised that the premises was a convenience shop. They advised that the applicant had accepted most of the conditions and reduced the hours sought to 00:00. They added that they would consider any further recommended conditions.

They informed the sub-committee that the business had been affected by the pandemic and trade had reduced by 55%. It was vital that an alcohol licence be granted, increasing the walk-in trade and the business' profit margin. Without licence the business would become insolvent. Already, customers would leave and not return when informed that the premises does not sell alcohol. There were two shops opposite the premises, both of which have licences until 00:00. The applicant stated that there were no other shops near the premises.

The applicant understood and appreciated that the premises was in a cumulative impact area (CIA) and recognised that there were problems with the suppliers and illegal workers at the premises pre-2017, stating that he didn't know the previous owners/licence holder. If a licence was granted, purchases would be made only at "authentic suppliers". When asked by the chair of the sub-committee, the applicant was surprised, but acknowledged one of the parties to the licence to assign was the same as that referred to in paragraph 28 in the report, but the applicant didn't know him; he was just a name on the lease.

The licensing sub-committee heard from the Metropolitan Police Service officer whose representation related to the prevention of crime and disorder licensing objective. They advised that premises was in the Peckham cumulative impact area where there was already a considerable amount of licensed premises including a

high number of off-licences. Peckham had a large problem of street drinking and alcohol abuse and the associated crime and disorder.

The police officer was of the view that the applicant had failed to address the cumulative impact in any way within the application and the conditions detailed in the operating schedule were minimal. The premises was owned by the council and a lease agreement was in place with the director of Peckham Food and Wine Limited in 2017. The land registry search showed the premises had been sub-leased to the applicant, suggesting the previous licence holder still had a controlling interest in the premises. If the licence was granted, the previous management could reclaim the use of the premises and circumvent the revocation and appeals process. The Metropolitan Police Service officer objected to the granting of the licence in its entirety and stated any further premises selling alcohol would only add to the cumulative impact, attract further alcohol dependence and increase crime and disorder.

The licensing sub-committee heard from the officer from trading standards whose representation was made in respect all four of the licensing objectives. The officer advised that he visited the premises with officers from the night time economy team on 21 May 2021 and spoke with the applicant, who was at the shop.

The applicant showed the officer some documents on his phone including a license to assign, dated 28 January 2020, which assigned the lease to Mr Muhammad Hayat Balouch. The applicant advised the business was owned by A & M Local Store Ltd and that Mr Muhammad Hayat Balouch was the director of that company; the applicant was the manager of the premises and he was in the process of applying for a personal license.

The applicant also showed the officer an application for a COVID business grant for A & M Local Store Limited addressed to Mr Aziz Balouch. When asked, the applicant stated that he was Aziz Balouch. The applicant then produced a DBS certificate which gave three further aliases and stated that the reason for changing his name was religious. In addition to this, trading standards objected to the application as the premises was in the Peckham cumulative impact area and there was a presumption that new license applications should be refused on the basis that the area was already saturated.

The licensing sub-committee then heard from the officer from licensing as a responsible authority who advised that the premise was situated within the Peckham cumulative impact area. Paragraph 131 of Southwark's statement of licensing policy was a rebuttable presumption that applications for new premises licences would add to the existing cumulative impact and should be refused. It was for the applicant to demonstrate that the application would not contribute to the negative local cumulative impact on any of the licensing objectives. The licensing responsible authority officer was of the view that the applicant had not addressed the presumption in his application and therefore recommended that the application be refused.

The licensing sub-committee then heard from the officer from the council's environmental protection team who also stated that any increase in alcohol sales in

the already saturated cumulative impact area was likely to contribute to a cumulative impact on public nuisance from street drinking, drunkenness, street fouling, and rowdy conduct in the street, particularly during the night and late evening. The application had not addressed the potential cumulative impact of the proposed licence, nor given any compelling reason, nor any reason at all, why this premises should be considered an exception to the cumulative impact policy.

The licensing sub-committee was informed that the premise had been a problem premises that was subject to a review by trading standards in 2017 when the licence was revoked. Despite this, the applicant failed to address the concerns raised by the responsible authorities either during the application's consultation period, or in the meeting. The sub-committee was unhappy that neither of the directors of A & M Local Store Ltd were in attendance at the meeting, especially when concerns had been raised of one of the assignees to the licence to assign having had previous dealings with the premises.

The applicant also failed to rebut the presumption to refuse this premises licence application. The sub-committee were referred to R (on the application of Westminster City Council) -v- Middlesex Crown Court [2002] EWHC 1104 in which HHJ Baker determined "...a licence could be refused on the sole ground that the area was already saturated with licence premises...and the cumulative effect of the existing premises was impacting adversely on the area to an unacceptable level". Since the premise is located in the Peckham CIA, this application is refused.

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**

The applicant may appeal against any decision:

- a. To impose conditions on the licence
- b. To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a. The licence ought not to be granted; or
- b. That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days

beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

Issued by the Constitutional Team on behalf of the Director of Law and Governance.

Date 22 July 2021