

## **MEETING OF THE LICENSING SUB-COMMITTEE**

**held 15<sup>th</sup> May 2012**

**PRESENT:** Councillors Clive Skelton, Geoff Smith and Philip Wood

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### **1. APPOINTMENT OF CHAIR**

- 1.1 RESOLVED: That, in the absence of the Chair and Deputy Chair of the Sub-Committee, Councillor Clive Skelton be appointed Chair of the meeting.

### **2. WELCOME AND HOUSEKEEPING ARRANGEMENTS**

- 2.1 The Chair welcomed attendees to the meeting and outlined basic housekeeping and fire safety arrangements.

### **3. APOLOGIES FOR ABSENCE**

- 3.1 No apologies for absence were received. Councillor Simon Clement-Jones attended the meeting as a reserve Member, but was not required to stay.

### **4. LICENSING ACT 2003 – NISA SUPERMARKET, 61-65 BARBER ROAD, SHEFFIELD, S10 1EA**

- 4.1 The Chief Licensing Officer submitted a report to consider an application by South Yorkshire Police for the review of a Premises Licence made under Section 51 of the Licensing Act 2003, in respect of the premises known as Nisa Supermarket, 61-65 Barber Road, Sheffield, S10 1EA.

- 4.2 Present at the meeting were Inspector Glen Suttwood and Benita Mumby (South Yorkshire Police, for the Applicants), Julie Hague (Sheffield Safeguarding Children Board), Craig Fisher (Trading Standards), Danny Simpson (Howells Solicitors, representing the Premises License Holder and Designated Premises Supervisor), Tahir Ayub (Premises License Holder), Zakar Malook (Designated Premises Supervisor), Andy Ruston (Licensing Officer), Marie-Claire Frankie (Solicitor to the Sub-Committee) and John Turner (Democratic Services).

- 4.3 The Solicitor to the Sub-Committee outlined the procedure which would be followed during the hearing.

- 4.4 Andy Ruston presented the report to the Sub-Committee and it was noted that representations had been received from the Sheffield Safeguarding Children Board and Trading Standards and were attached at Appendices 'C' and 'D' to the report, respectively.

- 4.5 Inspector Glen Suttwood referred to the history regarding the test purchase operations undertaken by South Yorkshire Police at the premises between 7<sup>th</sup> April 2011 and 17<sup>th</sup> February 2012, indicating that four test purchase operations had been conducted and all four had failed. The Police therefore had serious concerns with regard to the sale of alcohol to young people and the consequent effects of such sales, including the impact on the local community and the health and safety and wellbeing of the young people. He stressed that this was one of the Police's major concerns across the City. Inspector Suttwood also expressed concerns regarding the management of the premises, indicating that, although Mr Ayub and Mr Malook did not hold their respective positions within the company throughout the whole period of the test purchase operations, they were in position for some of the period and in respect of the test purchase undertaken on 29<sup>th</sup> July 2011, it was Mr Ayub who sold alcohol to underage customers, although he was not the Premises License Holder at that time. He also referred to the fact that one of the sales assistants involved in one of the failed test purchases provided false details in respect of his identification to the Police on the grounds that he was not lawfully employed at the shop and therefore, not authorised to sell alcohol.
- 4.6 In response to questions from Members of, and the Solicitor to, the Sub-Committee and Mr Simpson, Inspector Suttwood confirmed that all the test purchases undertaken during the period 7<sup>th</sup> April 2011 to 17<sup>th</sup> February 2012, were failures whereby the proper procedures in terms of the sale of alcohol to young people were not carried out. Following the fourth and final failed test purchase on 17<sup>th</sup> February 2012, South Yorkshire Police had requested a 48 hour voluntary closure of the premises from 20<sup>th</sup> to 22<sup>nd</sup> April 2012, which was complied with. It was confirmed that there had been a further test purchase at the premises on 20<sup>th</sup> February 2012, but this had been undertaken by Trading Standards Officers, and related to the sale of cigarettes, with no involvement from the Police. However, the premises passed this test. Whilst the Police had evidence of incidents of anti-social behaviour caused by young people drinking on the streets in the Crookes/Walkley areas, they were unable to prove that such incidents were a direct result of the sale of alcohol to young people at the premises. In terms of the reference to the member of staff who had provided the Police with false details regarding his identification, it was stated that the employee in question had confirmed, in an interview with the Police, that he was not employed by the company, but only helped out when required.
- 4.7 Julie Hague commenced her representations by confirming that the Premises License Holder had now attended the relevant Safeguarding Children training, therefore this requirement should now be withdrawn from the conditions. She stated that her concerns centered around the fact that the present Premises License Holder and Designated Premises Supervisor had been involved in some way in the operation of the premises when there had been a number of incidents whereby alcohol had been sold to young people, as well as a number of incidents when counterfeit goods had been sold at the premises. Specific concerns were expressed regarding the level of such sales, in that there had been four failed test

purchases at the premises in less than 12 months and that alcohol had been sold to children as young as 15. She stated that there were no safe limits in terms of the consumption of alcohol by young people as they do not understand the harmful effects it can have, both on their physical and mental wellbeing and that it could affect their performance at school, resulting in them being involved in accidents or making them vulnerable. On 9<sup>th</sup> December 2011, Mr Ayub was offered a place for himself or a member of staff on the multi-agency 'Safeguarding Children at Licensed Premises' training workshop, but he failed to respond to this request. Despite this offer of assistance, the premises went on to fail a further test purchase operation on 17<sup>th</sup> February 2012, and in line with the multi-agency procedure, a further offer of training was made to Mr Ayub on 7<sup>th</sup> March 2012. Mr Ayub took up this offer and attended the training workshop on 18<sup>th</sup> April 2012. Whilst Mr Ayub produced a refusals log on this date, there appeared to be little other evidence of any improvements made to the premises' systems and procedures. Ms Hague concluded by referring to additional concerns following the receipt of information provided by Trading Standards relating to the discovery of counterfeit alcohol at the premises in October and November 2011.

- 4.8 In response to questions raised by the Solicitor to the Sub-Committee and the Solicitor representing the Premises License Holder and Designated Premises Supervisor, it was confirmed that the Designated Premises Supervisor had not attended any of the training offered and that it was now accepted that, further to the last visit to the premises on 23<sup>rd</sup> April 2012, the appropriate software, known as till prompts, had been installed on the tills and appropriate signage provided at various locations within the premises.
- 4.9 Craig Fisher reported that he was present on a test purchase operation undertaken by Trading Standards on 31<sup>st</sup> March 2009, when a volunteer aged 15 was successful in buying cigarettes at the premises. It was acknowledged that Mr Ayub was not the Premises License Holder at this time. He visited the premises again on 18<sup>th</sup> October 2010, accompanied by Lisa Marsden, Enforcement Officer, and seized 27 bottles of Glen's Vodka on the grounds that the officers suspected that it could be counterfeit. On further inspection, it was found that it was not counterfeit but had been duty diverted and had no legitimate market in the UK. On 14<sup>th</sup> October 2011, a complaint had been received that a student had purchased alcohol from the supermarket which had subsequently made them ill. Mr Fisher visited the premises the same day and seized several bottles of alcohol which were believed to be counterfeit. Two further complaints were received on 17<sup>th</sup> October 2011, which, along with the previous complaint, had been made following reports on local TV of the sale of Drop Vodka in South Yorkshire, which was believed to be contaminated. The latter complaints related to the purchase of such vodka from the premises and following this, a further visit was made to the premises on 2<sup>nd</sup> November 2011, and a number of bottles of suspect alcohol were seized. Samples were sent to the Public Analyst for testing, and the results confirmed that some was counterfeit and the vodka was

contaminated. Mr Fisher stated that whilst he could not confirm what health risks were involved in connection with the consumption of the contaminated vodka, he could only presume that they would be detrimental to people who consumed the drink in some way.

- 4.10 In response to questions from Members of, and the Solicitor to, the Sub-Committee and the Solicitor representing the Premises License Holder and Designated Premises Supervisor, Mr Fisher confirmed that Trading Standards Officers had not carried out any test purchase operations in relation to alcohol at the premises, and that officers inspecting the premises had not been provided with any receipts or purchase invoices for the suspected counterfeit drink discovered on the premises when requested. Officers were sure that the student had become ill after drinking the contaminated vodka. With regard to the legal proceedings pending in relation to the counterfeit and contaminated alcohol discovered on the premises during the visit made on 2<sup>nd</sup> November 2011, Mr Fisher stated that the prosecution file was in the final internal approval stage which, if approved, would then be submitted to Legal Services. In terms of the action taken against the Company following the test purchase operation and subsequent visits, it was reported that following the failed test purchase on 31<sup>st</sup> March 2009, the Premises License Holder at that time (Rebwar Ismail) had been given a written caution and provided with advice on underage sales. Following the seizure of the suspected counterfeit alcohol on 18<sup>th</sup> October 2010, Trading Standards Officers wrote to the owner of the premises at that time, but ownership changed hands prior to any action being taken. Trading Standards Officers had dealt with Mr Ayub in respect of the final two incidents. Mr Fisher accepted that the present Premises License Holder and Designated Premises Supervisor were not involved following the test purchase operation in 2009 and the seizure of suspect counterfeit alcohol in October 2010 and that the Prince Consort Vodka discovered on the visit in October 2011, had been purchased from a Cash and Carry, and the relevant invoice had been provided. Whilst it was accepted that Mr Ayub was not the Premises License Holder in March 2009 and October 2010, and that the suspected counterfeit alcohol found on the premises was likely to be old stock, it was evident that more counterfeit alcohol had been delivered to the premises during October and November 2011.
- 4.11 Danny Simpson stated that most of the suspected counterfeit alcohol had been seized from the premises prior to Mr Ayub and Mr Malook being employed by the Company and that they were both very upset that such stock had been discovered on the premises. It was accepted that the correct procedures had not been adhered to during the period of the failed test purchase operations. As an explanation for this, Mr Simpson stated that the majority of customers who purchased alcohol from the supermarket were students and the staff found it difficult to challenge so many customers by asking them their age. The member of staff who provided the Police with false details of his identity was new, and working on a trial basis at the time. Mr Simpson stated that now Mr Ayub and Mr Malook had been in position for some time, and had installed the relevant

software on the tills and had appropriate signage in the supermarket, they would welcome a visit by Trading Standards Officers and the Children Safeguarding Board. He stressed that all new staff were now supervised and were instructed, as part of their induction, not to sell alcohol without supervision. He also circulated details regarding nominations for the supermarket under the Responsible Retailer Scheme. Mr Simpson concluded by stating that whilst there had been issues at the supermarket in the past, Mr Ayub and Mr Malook had not been responsible for the majority of the problems and had given their assurances that there would be no more problems in respect of the operation of the supermarket.

- 4.12 In response to questions from the Members of, and the Solicitor to, the Sub-Committee, Julie Hague and Craig Fisher, Mr Simpson confirmed that Mr Malook was appointed Designated Premises Supervisor on 18th August 2011, and Mr Ayub was appointed Premises License Holder in November 2011. In connection with the failed test purchase operations, whilst it was accepted that students would be used to being asked for identification, staff found it difficult to challenge so many customers. Mr Ayub stated that he had not attended any further training sessions since April 2012 because there were staffing problems at the supermarket and therefore he didn't have the time. He accepted that he did not realise how important such training was as he had not managed a business like this before. Whilst it was accepted that there had been errors in terms of the failed test purchases, this had not been down to the staff 'cutting corners' in order to maximise profits. It was confirmed that Mr Malook had been associated with the premises since June 2011 and Mr Ayub had been associated on and off for the last two years. The relevant software had been installed on the tills, which would prompt staff to ensure they challenged customers purchasing alcohol and cigarettes if they believed them to be underage, and Mr Ayub stated that training would be provided for members of staff after he had been on the relevant training course. Whilst it was accepted that underage sales of alcohol and cigarettes was a criminal offence, there was no evidence to show that any anti-social behaviour in the area was linked directly to the premises. In terms of the proposed action to be taken, Mr Ayub confirmed that the relevant software had already been installed on the tills and the relevant signage was now in position. He stated that he would be present at the premises from 7.00 am to 7.00 pm every day and that Mr Malook would be there after he had left, up until closing time at around 00:00 hours in order to more closely supervise staff selling alcohol. He stated that he had talked to members of staff about their responsibilities and had given them the relevant guidance relating to underage sales to read. He would ensure that all stock was purchased from a Cash and Carry or Costcutter and he would ensure that relevant invoices were kept. In terms of the management structure of the premises, it was reported that the Company had been under the ownership of S and H Corporation Limited since 2009, and the Premises License Holder was Rebwar Ismail and the Designated Premises Supervisor was Mohammed Karim. Mr Malook became Designated Premises Supervisor on 18th August 2011 and Mr Ayub became the Premises License Holder in November 2011. Mr Ayub confirmed that he would welcome further

assistance from Trading Standards, such as help to identify tax-evaded goods. He confirmed that he was working at the premises and was aware that Trading Standards Officers had seized a number of suspect counterfeit bottles of alcohol when he was Premises License Holder. He also confirmed that all staff were instructed to complete the refusals book each time a customer attempting to purchase cigarettes or alcohol was refused on the basis that they could not provide proper identification in terms of their age.

- 4.13 RESOLVED: That the public and press and attendees involved in the application for review of the licence be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in Paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.
- 4.14 The Solicitor to the Sub-Committee reported orally, giving legal advice on various aspects of the application.
- 4.15 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 4.16 RESOLVED: That the Sub-Committee agrees to:-
- (a) remove the Designated Premises Supervisor on the grounds of poor management, and due to the fact that he was present at the failed test purchase operation undertaken at the premises on 18<sup>th</sup> November 2011 and had allowed an unauthorised person to sell alcohol, resulting in a failed test purchase; and
  - (b) modify the conditions of the Premises License as follows:-
    - (i) the Premises License Holder or Designated Premises Supervisor is to be on the premises at all times alcohol is for sale;
    - (ii) Condition 7 in Annex 2 – Conditions Consistent with the Operation Schedule, be removed;
    - (iii) Challenge 25 will be in operation at all times;
    - (iv) all staff will be trained and records kept for six months. All staff will be trained in the selling of age sensitive products and sign to confirm that they have been trained. Records of the training and confirmation signatures to be kept for six months and made available to officers from Sheffield City Council and South Yorkshire Police on request;
    - (v) refresher training to be given every six months. Records of the training and confirmation signatures to be kept for six months

and made available to officers from Sheffield City Council and South Yorkshire Police on request;

- (vi) the Designated Premises Supervisor or Premises Licence Holder be required to attend a Safeguarding Children course;
- (vii) till prompts will be used at all times; and
- (viii) all alcohol to be purchased from a reputable and established supplier and invoices are to be kept for 12 months and available for inspection on the request of Trading Standards Officers.

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