

NOTICE OF DECISION**LICENSING SUB-COMMITTEE – 13 DECEMBER 2017****LICENSING ACT 2003: BERFIN SUPERMARKET, 74 DENMARK HILL, LONDON, SE5 8RZ****1. Decision**

That the council's licensing sub-committee, having considered and application by trading standards for a review of the premises under Section 51 of the Licensing Act 2003 in respect of the premises known as Berfin Supermarket, 74 Denmark Hill, London SE5 8RZ and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

- Revoke the premises licence.

2. Reasons

The reasons for the decision are as follows:

The licensing sub-committee heard from the trading standards officer, the applicant for the review who stated that this was the second review of the premises licence; the first being heard in November 2016, when the premises licence holder was removed from being the designated premises supervisor, the licence was modified and there was a reduction in licensable hours.

On 24 May 2017 the current designated premises supervisor (DPS) failed a test purchase where a can of Carlsberg Special Brew (8% ABV) was sold in breach of condition 841. As a result, trading standards and Southwark's night time economy team carried out a joint inspection at the premises.

A huge quantity of beers, lagers and ciders were offered for sale in breach of that condition. A total of 1012 cans/bottles plus 22 litres of Amberdown white cider; in excess of 500 litres of alcohol in breach of this maximum strength condition some six months after that condition was imposed. It was also noted that there were large quantities of Nigerian (Foreign) Guinness (7.5% ABV) and Dragon Stout (7.5% ABV) available for sale. No permission had been sought from the police to sell these products.

Due to quantity of cans and bottles, officers were only able to seize the items on display in the shop. Displayed on the fridge door there was a notice stating named beers, ciders and lagers "Will not be allowed to be sold after 11pm due to high alcohol volume". Neither the premises licence holder nor the DPS were not fully conversant in the correct operation of the CCTV and were unable to demonstrate its operation to Trading Standards and the Police, in breach of condition 793.

Trading standards returned the following day and sought the production of all invoices for the purchase of alcohol from 1 November 2016 to 25 May 2017. During this visit officers witnessed two females with obvious alcohol dependency problems seeking to buy cans of K-cider but were advised it was no longer available.

A number of invoices were produced on 31 May 2017. A quantity of invoices appeared missing and it was trading standards views that duty evaded drinks had been purchased (without invoices) and sold on to the public. Not taking into account of stock that may or may not have been in the shop at the time of the previous review, analysis of the purchase of super strength beers and ciders showed 128 cans of K-cider were purchased on 24 November 2016, being only eight days after the first review. A total of 1336 cans of K-cider were purchased in this period. It was apparent that the sale of super strength beers and ciders made up a significant percentage of the overall income of the shop.

The premises licence holder was interviewed on 13 June 2017 who admitted that he made all day to day decisions and bought all the stock in the shop, he avoided answering questions around street drinkers and alcoholics in the vicinity or the alcohol treatment centre in the immediate area and that he knew it was illegal to purchase duty evaded alcohol.

Trading standards recommended that the premises licence be revoked.

The licensing sub-committee heard from the representative for the Metropolitan Police Service who supported the review of the premises licence by trading standards. They stated that this was the second review in a year and that the premises had again operated in breach of the licence conditions, including those imposed by the committee in November 2016.

The Camberwell area, where the premises are situated has a significant problem with alcohol misuse, street drinking by alcohol dependent people. A community impact statement had been submitted from an officer from the safer neighbourhood team that detailed the extent and seriousness of alcohol abuse in the area and that the area had gained notoriety for alcohol related anti-social behaviour. Statistics from the UK crime map demonstrated the high level of incidents reported to the police; something which the premises were contributing to.

It was emphasised that no permission had been sought to sell any named beers or cider with an ABV above 6.5% and also, they premises was unable to operate the CCTV on a compliance visit as directed by the condition placed on the licence. The police view the magnitude of the breaches as serious and fully support the application by trading standards review of the premises licence and the recommendation that the licence be revoked as further measures would have little or no impact on the running of the premises.

The licensing sub-committee heard from the officer representing licensing as a responsible authority whose representation was based on prevention of crime and disorder and also prevention of public nuisance licensing objectives.

Reference was made to November 2016 review of the premises licence, which had been submitted by trading standards and had also been made on grounds of prevention of crime and disorder and protection of children from harm. The outcome of that review was that the premises licence holder remained as the licensee and his wife became the DPS. The officer also raised concern that during the interview under caution, the licence holder refused to discuss the very serious issue of street drinkers and the known alcohol abuse in the Camberwell area. This suggested that the licensee did not have any concern and/or understanding the extent of alcoholism in the area and those undergoing treatment and the impact this has on those vulnerable individuals or those that live in the local area generally.

Because of the continued pattern of disregard for legislation created to control the sale of alcohol the officer was of the opinion that neither the premises licence holder nor the DPS were capable of running a licensed premises, particularly since the premises licence holder is the controlling factor in the running of the premises. No change in a DPS or modified conditions again will resolve the management issues at the premises and therefore, supported trading standards review and their request for the revocation of the premises licence.

The licensing sub-committee heard from the representative for the premises licence holder who advised that both the licensee and the DPS were apologetic and remorseful for non-compliance of their licence conditions. Particularly with the licensee, there was language barrier and understood from the translator from the November 2016 review that there had only been a reduction in the licensable hours. He had not been made aware of the additional conditions imposed by the translator, and did not read either the notice of decision from the previous review or the new licence issued as a result of the review. It was accepted that there was a risk that the premises licence could be revoked, but asked that the sub-committee give one last chance: impose a suspension and additional conditions as the licensee's family relied on the income from the premises.

This review of the premises licence revolved around a lack of management and compliance of the premises licence conditions, in particular the sale of the so called super strength beers and ciders. This licensing sub-committee gave the premises licence holder an opportunity to continue his operation in November 2016 when he was removed as DPS and the licence conditions modified. The licence holder failed to read the notice of decision (or the issued licence) and take steps to understand it, yet his wife was appointed DPS. Whilst she claimed to have read both documents, she continued to allow the sale of the super strength beers and ciders. The DPS gave direct evidence to this sub-committee and stated that other premises in the area were allowed to sell the super strength beers and ciders and could not understand why Berfin Supermarket could not. The DPS also blamed Southwark's licensing team for failing to advise which specific beers and ciders could not be sold, despite the % ABV being clearly labelled on all alcohol products.

This licensing sub-committee do not accept the licence holder's argument that the breaches was as a result of a language barrier and that he did not understand the implications after the first review. This is neither a defence, nor is it acceptable.

It is the management of premises such as Berfin Supermarket that puts the public's health at risk and is possibly having a negative impact on anti-social behaviour and crime and disorder. It is the unanimous opinion of this licensing sub-committee's that must not operate in such a way especially in such a high risk area.

The premises have demonstrated a total disregard to the measures imposed on them at the previous review by this licensing sub-committee. This position was further compounded when neither the premises licence holder, nor the DPS were able to explain what challenge 25 is, despite a condition being placed on the licence in November 2016 that all staff must be trained in the prevention of sales of alcohol to underage persons and the challenge 25 scheme in operation in the business. It is quite apparent that this has not happened in breach of condition 8AB of the licence.

The officer from trading standards advised that enforcement action is pending. The sub-committee is of the view that it is in the public interest to prosecute given the circumstances of this case.

Since April 2017, under Excise Note 2002 it is a criminal offence for both wholesalers and trade buyers found buying alcohol from non-approved wholesalers and there are both civil and criminal penalties for wholesalers trading without having submitted their application to HMRC came into force from 1 April 2016 trade buyers who buy alcohol from unapproved wholesalers from 1 April 2017. The licence holder acknowledged in interview that to buy duty evaded alcohol and/or failure to have invoices were illegal. This licensing sub-committee expects that trading standards makes the necessary referral to HMRC.

When granting and/or reviewing a premises licence, this licensing sub-committee must have trust in that an individual or company will run the premises well and comply with the measures placed on the licence. On this occasion, there are no suitable conditions to that can be added to the licence and the committee has no confidence that any period of suspension will have an impact on the premises. In those circumstances, there is no other alternative but to revoke this premises licence.

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.

4. 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 been 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 Democracy.

Date: 13 December 2017