

**Havering Council – Decisions taken by the Licensing Sub-Committee on Friday, 19 May 2017**

Agenda Item No	Topic	Decision
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**Note:** this decision list is for guidance only. The text of the minutes, which may be different, is definitive.

**Part A – Items considered in public**

A1	COSTCUTTER, 193 UPMINSTER ROAD SOUTH, RAINHAM, RM13 9BB - APPLICATION TO REVIEW A PREMISES LICENCE	<p><b>PREMISES</b></p> <p>Costcutter 193 Upminster Road South Rainham RM13 9BB</p> <p><b>DETAILS OF APPLICATION</b></p> <p>The application for a Review of the Premises Licence was made by Sasha Taylor, Trading Standards Specialist for the London Borough of Havering under section 51 of the Licensing Act 2003. The application was received by Havering Licensing Authority on 28 March 2017.</p> <p><b>APPLICANT</b></p> <p>Sasha Taylor Havering Trading Standards Specialist Mercury House Mercury Gardens Romford RMI 3SL</p> <p><b>1. Details of existing licensable activities</b></p> <p>The venue had a Premises Licence number 013756 which permits the sale of alcohol -</p>
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		<p>Monday to Sunday – 07.00 to 23.00</p> <p>The current licence holders at the premises were Mr Mehmet Arslan &amp; Mr Haci Arslan since June 2014.</p> <p><b>2. Grounds for Review</b></p> <p>The application for the premises licence review had been served under section 51 of the Licensing Act 2003 following the underage sales of alcohol been made to 15 and 16 year old underage volunteers. The sales took place on 17 September 2016 and 25 February 2017.</p> <p>The premises had failed to uphold the licensing objective of protection of children from harm and the prevention of crime and disorder objective.</p> <p><b>3. Details of Representation</b></p> <p><b>Trading Standard</b></p> <p>The premises came to the attention of the Trading Standards service following receipt of a complaint from an environmental health officer, who whilst visiting shops in the Upminster Road South area had witnessed a group of youths asking adults to buy alcohol and cigarettes for them.</p> <p>As a result of the complaint the premises was visited as part on an underage sales</p>

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		<p>operation on Saturday 17 September 2016, at approximately 13:30pm Mr Mustafa Arslan (who is the father of the premises licence holders) sold a can of Budweiser beer, alcohol content 4.8%, to a 15 year old male volunteer.</p> <p>The volunteer was not challenged as to their age or for any identification. The seller was issued with a fixed penalty notice for the offence. On the day two out of seven premises failed the exercise.</p> <p>Following the sale Mr Mehmet Arslan and Mr Haci Arslan were both invited to attend a meeting at the Trading Standards offices. Mr Memhet Arslan attended the meeting whilst his brother stayed and managed the premises. Also present at the meeting were representatives from Trading Standards, Licensing and the Police Licensing Officer.</p> <p>The meeting was held to discuss the underage sale failure, confirm the conditions already on the licence and agree an action plan to prevent further underage sales in the future.</p> <p>The following recommendations were offered at the meeting:-</p> <ul style="list-style-type: none"> <li>• Mr Arslan should read all the conditions on his licence</li> <li>• That a suitable person should be in control of the shop when the designated premises supervisor was not available</li> <li>• A Challenge 25 pack was given to Mr Arslan to take away and read</li> <li>• He was advised and agreed to use a refusal book</li> <li>• He was advised to ask for identification and record everything in the refusal book</li> </ul>

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		<p>even if a person produced identification</p> <ul style="list-style-type: none"> <li>• Mr Arslan was informed that the service would continue to monitor the premises</li> <li>• The Challenge 25 pack contained; Challenge 25 posters, badges, advice about how to train staff, keep records of training and a code of practice. The pack also contained a refusal book with numbered pages, an instruction card to remind staff to ask for identification and an application form for the DPS to fill out and send back to the service if they wish to join the scheme. The DPS never returned the application form.</li> </ul> <p>Following the meeting the premises was put on for a revisit to test whether the action plan had been successful and to check that staff were now asking for identification and refusing sales.</p> <p>On Saturday 25 February 2017 at 14:30pm, the premises was revisited, on the visit a 16 year old female volunteer was sold a bottle of Isla Negra rose wine, 12% alcohol volume. The volunteer was not challenged as to their age or for any identification. The seller was identified as a Ms Claudia Pirv and was issued with a fixed penalty notice for the offence. Ms Pirv stated that she had not been trained to sell alcohol and she usually worked at the bakery. She thought the volunteer looked 21years of ag. On the day two out of seven premises failed the exercise.</p> <p>Trading Standards Officer, Joy Afoke, witnessed the sale and said that Mr Mustafa Arslan was behind the counter with the seller at the time of the sale and looked at the volunteer but did not stop or authorise the sale. Mr Mustafa Arslan was the person who sold alcohol to the 15 year old boy on 17th September 2016.</p>

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		<p>It was noted that the DPS was at home at the time of the sale but returned to the premises after a member of staff called him. The DPS confirmed that the seller had been working at the shop for around three months and she usually worked in the bakery section. He said that he had given the seller written authorisation to sell alcohol and that all the paperwork were at home. He also said that all training records were kept at home.</p> <p>Mr Arslan did produce a refusal book and the last date it was used was on 17 February 2017. There were no challenge 25 posters displayed around the shop and none of the staff were wearing challenge 25 badges. There was no evidence that any age verification policy was being operated at the premises.</p> <p>The DPS informed Trading Standard officers that there was a till prompt which was checked and the wording read "Only to sell to customers aged 18 years or over". Officers were of the view that the till prompt was clearly ineffective and demonstrated that the premises was not operating a Challenge 25 policy.</p> <p>There were no training records available during the visit and the CCTV could not be retrieved as the DPS claimed not to know the code for the system.</p> <p>On March 2017 Trading Standard officers revisited the premises, Mr Haci Arslan was present behind the counter. There were no challenge badges being worn by staff members. Ms Taylor asked to see the premises refusal book and training records but was informed that the books were with the premises solicitors. Officers were informed that the CCTV system was to be fixed on that day.</p>

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		<p>Trading Standard officers stated that during the visits a number of current licensing conditions appeared to have been breached:</p> <ul style="list-style-type: none"> <li>• CCTV images being retained for a minimum of 28 days and made available to the Police and authorised officers of the Licensing Authority upon reasonable request.</li> <li>• Every supply of alcohol under the Premises Licence must be made or authorised by a person who holds a Personal Licence.</li> <li>• The premises will maintain a Challenge 25 policy, whenever a person looks or appears to be under the age of 25, they will be asked for ID to prove that they are 18 years or older.</li> <li>• All staff will be trained before making sales of alcohol - The training will include their responsibilities under the Licensing Act 2003.</li> <li>• Training will be documented and made available to the police and authorized officers of the Council upon reasonable request.</li> </ul> <p>The Sub-Committee was informed that the premises had failed which gives the Trading Standards Service significant concerns as to their commitment to preventing underage sales and responsible alcohol retailing.</p>

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		<p>Trading Standard officers added that the premises appeared to be unable to successfully operate a Challenge 25 scheme despite attempts by the Trading Standards Service offer of a valuable tool to the premises.</p> <p>The Sub-Committee was informed that the fact that two underage sales have occurred in such a short period of time was evidence that the operator was either unwilling or unable to change their manner of operation and that the trader was failing in its duty to protect children from harm. The premises had not passed any test purchase exercises to mitigate our concerns.</p> <p>The Trading Standards service had lost confidence in the management of the premises and concluded that the failures were sufficiently serious that revocation of the licence should be considered.</p> <p>Trading Standards services added that if the Sub-Committee did not feel it was appropriate, then officers would suggest that robust conditions were required to prevent further underage sales at the venue and that the licence should be suspended whilst the systems and procedures were brought up to standard.</p> <p>The Police Licensing Officer made a representation in support of the review of the premises licence submitted by the Trading Standards.</p> <p>PC Oisin Daly addressed the Sub-Committee reiterating his representation that the premises had failed to promote the licensing objectives in relation to the protection of children from harm and prevention of crime and disorder.</p>

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		<p>PC Oisin Daly stated that the Police have no further evidence to add to the application but considered that there was a significant risk of harm to children with the premises operating in its current guise.</p> <p>It was worth noting that the premises was visited as a result of intelligence received regarding youths attempting proxy sales of alcohol and cigarettes at the venue. It highlights the fact that the venue and its location in a residential area provided a draw for youths wishing to consume alcohol.</p> <p>PC Oisin Daly stated that the fact that the premises failed two test purchases in relatively quick succession would indicate that the venue had not treated their responsibilities under the Licensing Act with due regard.</p> <p>The Sub-Committee was therefore informed that in accordance to paragraph 11.30 section 182 of the Licensing Act on persistent sales of alcohol, guidance details that a review should be the norm in these circumstances and that the licensing authority should consider revoking the licence if it considers this appropriate.</p> <p>PC Daly stated that the premises had agreed to implement Challenge 25 and other actions as a result of the first underage sale, in the Police view, these actions were clearly ignored or loosely enforced by the management of the premises.</p> <p>The Police Licensing Officer was of the opinion that the management at Costcutter had not shown due diligence in relation to underage sales and Police would ask that the Sub-Committee give serious consideration to revocation of the licence.</p>



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		<p>PC Daly stated that if the Sub-Committee were minded not to revoke the licence then the Police would ask that the Sub-Committee give consideration to the following conditions:</p> <ul style="list-style-type: none"> <li>- The DPS or premises licence holder to be present at the premises between the hours of midday and 22:00 hours on Friday and Saturdays and any bank holiday Sunday.</li> </ul> <p>(The two failed test purchases were made on a Saturday afternoon, traditionally Friday and Saturday evenings have been the periods of risk involving youths wishing to purchase alcohol)</p> <ul style="list-style-type: none"> <li>- The premises licence holder to employ an external agency, to be approved by Havering Trading Standards, to conduct training at the premises for all new staff and refresher training on a quarterly basis with training records sent by email to Havering Trading standards and Havering Police Licensing upon completion.</li> <li>- The premises licence holder to employ an external agency, to be approved by Havering Trading Standards, to conduct test purchases at the premises on a quarterly basis with results of test purchases to be sent to Havering Trading Standards and Havering Police Licensing upon completion.</li> </ul>

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		<p><b>4. Response from the Premises Licence holder</b></p> <p>Mr Graham Hopkins a Licensing Agent responded on behalf of premises owners – Mr Mehmet Arslan and Mr Haci Arslan and NARTS Food &amp; Leisure Ltd.</p> <p>He clarified the role and activities of Serve Legal; an independent test purchasing company to the premises and in general.</p> <p>The Sub-Committee was informed that the premises had today submitted an application to make Mr Haci Arslan as the new DPS at the premises.</p> <p>Mr Hopkins stated that the brothers took over the premises about three years ago and employ four additional staff.</p> <p>Mr Hopkins reiterated his submitted statement to the Sub-Committee outlining all the actions that the premises had undertaken with NARTS and Serve Legal to uphold the Licensing objectives and satisfy responsible authorities.</p> <p>Mr Hopkins apologized on behalf of the premises for the two test failings that occurred and also pointed out that the premises had since passed 2 test purchases undertaken by Serve Legal.</p> <p>The Sub-Committee was informed that the premises was acceptable to the conditions suggested by the Police.</p> <p>That also the premises intended to have three personal licence holders to undertake</p>

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		<p>the sale of alcohol at the premises, this would ensure there was a licence holder available at all times.</p> <p>Mr Hopkins stated since the premises started working with NARTS, there had been a positive attitude and the premises would ask that the Sub-Committee give the brothers another chance.</p> <p>In response to training, the Sub-Committee was informed that Mr Arslan senior had been trained at the previous premises. The shortcoming of his action in September 2016 was unacceptable but the premises would like to emphasis on the positive and the moving forward.</p> <p>Mr Hopkins also stated:</p> <ul style="list-style-type: none"> <li>• That the till prompt had been introduced to the till at the premises.</li> <li>• The premises had 13 fitted and tested movement sensor cameras on site. All cameras record at all times and meet the requirement of the Police.</li> <li>• It was clarified that Serve Legal undertook the test purchases without consultation with the premises owner at a time and date unannounced.</li> <li>• The result of future test purchases would be released directly to the Police and Trading Standards.</li> <li>• The premises was to retain the services of NARTS to provide continuous training to staff at the premises in order to prevent such an issue arising again.</li> </ul>

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		<p><b>5. Determination of Application</b></p> <p>The Sub-Committee determined the application for a review of the premises licence in accordance with section 52 of the Licensing Act 2003 and considered the matter with a view to promoting the licensing objectives. In making its decision the Sub-Committee had regard to the Guidance issued under section 182 of the 2003 Act and the local authority's licensing policy. In addition, the Sub-Committee took account of its obligations under section 17 of the Crime and Disorder Act 1998.</p> <p>The Sub-Committee were mindful of the need to reach a decision that was appropriate and proportionate and justified on the evidence.</p> <p>The Sub-Committee listened carefully to the submissions made by all parties.</p> <p>The licence holders accept that there has been a catalogue of breaches of the licence, and we find there has been a failure to uphold the licensing objectives. It is significant that the breaches were repeated despite the intervention and guidance of the licensing authority.</p> <p>Whilst there have been serious breaches of the licence conditions, including underage sales of alcohol, the Sub-Committee is satisfied, in light of the steps taken by the licence holders, that the imposition of the following four licensing conditions will suffice to promote the licensing objectives:</p> <ol style="list-style-type: none"> <li>1. The premises licence holder to employ an external agency, to be</li> </ol>

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		<p>approved by Havering Trading Standards, to conduct test purchases on a quarterly basis, with the results of the test purchases to be sent <u>directly</u> to Havering Trading Standards and Havering Police Licensing team.</p> <p>2. The premises licence holder to employ an external agency, to be approved by Havering Trading Standards, to conduct training at the premises for all new staff and refresher training on a six-monthly basis with the training records to be sent to Havering Trading Standards and Havering Police Licensing team upon completion.</p> <p>3. A personal licence holder shall be present and on duty at the premises at all times.</p> <p>4. The DPS or premises licence holder to be present at the premises between the hours of midday and 2200 hours on Fridays and Saturdays, and on any Sunday prior to a bank holiday.</p> <p><b>6. Right of Appeal</b></p> <p>Any party to the decision or anyone who has made a relevant representation [including a responsible authority or interested party] in relation to the application may appeal to the Magistrates' Court <u>within 21 days of notification of the decision</u>. On appeal, the Magistrates' Court may:</p>

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		<ol style="list-style-type: none"> <li>1. dismiss the appeal; or</li> <li>2. substitute the decision for another decision which could have been made by the Sub Committee; or</li> <li>3. remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and</li> <li>4. make an order for costs as it sees fit.</li> </ol>
A1		
A2		