

**MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (B) HELD IN COUNCIL CHAMBER, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON TUESDAY, 16 AUGUST 2016 AT 10.00 AM**

Present

Councillor DRW Lewis – Chairperson

PA Davies

CJ James

Officers:

Katie Brook	Senior Licensing Technical Officer
Fiona Colwill	Licensing Enforcement Officer
Julie Ellams	Democratic Services Officer - Committees
Andrea Lee	Senior Lawyer
Yvonne Witchell	Team Manager Licensing

25. APOLOGIES FOR ABSENCE

None

26. DECLARATIONS OF INTEREST

None

27. LICENSING ACT 2003 : SECTION 17 APPLICATION FOR PREMISES LICENCE 74 PISGAH STREET KENFIG HILL TO BE KNOWN AS PISGAH CONVENIENCE STORE

The Chairperson invited all those in attendance to the meeting and the necessary introductions were made.

The Licensing and Registration Manager explained that the purpose of the report was to consider an application for a new Premises Licence at 74 Pisgah Street, Kenfig Hill made by Mr Nagarajah Nagendirarajah.

The Licensing and Registration Manager reported that two additional documents had been served on all parties, a witness statement and photographs. The application form, operating schedule, representations from the Licensing Authority and the Chief Officer of Police and further supporting information were contained within the report. The Licensing and Registration Manager confirmed that there were no specific local licensing policies applicable to the Kenfig Hill area.

The Chairperson invited Mr Ian Jones, Barrister, to present the case for the applicant. He explained that the premises and location were relatively uncontroversial and that it was the identity of the applicant and his involvement in previous applications that created an issue.

The Licence was previously held by the applicant's wife and the couple lived together in a flat above the premises. The applicant had been involved with off licences/petrol stations in London until 2009 when he became the proprietor of a franchise at Tondu Service Station. At that time he was responsible for five staff split between Tondu and Ton Pentre stations and during that time

there were no licensing issues. He surrendered the licence for these in January 2016. His intention was to focus on the store with less involvement from his wife who was now pregnant.

The objections related to immigration issues, the test purchase in February 2015 and the sale of alcohol outside authorised hours in July 2015. The person minding the till at the time of the test purchase was the brother-in-law of the applicant who had no right to be in the UK. This should not have happened but the applicant was not involved, he was not present or in charge at that time.

Another employee was found to be an illegal immigrant at one of the service stations however his employment predated the applicant's involvement with the service station and the applicant was required to take on existing staff. Lessons had been learnt from his experience.

Mr Jones suggested that the police representations were at a level where there was no need to revoke a licence and they were not strong enough to refuse a licence. There were no issues with the store location or layout and if permission had been granted for the increase in floor space, it would not have been a problem. Other issues concerning failure to display the correct notices had since been resolved. He suggested an additional condition for consideration, in addition to the standard conditions:

“The name and address of anyone involved with the sale of alcohol to be submitted to the police in advance. Details of staff already involved in the sale of alcohol at the premises also to be submitted to the police”.

PC Kevin Ellis queried the impact of this condition on the issues currently being considered and asked what they expected the police to do with this information?

Mr Jones explained that the applicant would be responsible for his employees and he wanted to be open and upfront. This would also give assurances that the only people serving would be employees. If the police checked and they had not received this information for an employee then it would be a breach of condition. There would be no change to the burden of proof and the applicant would still be responsible.

PC Kevin Ellis requested further information concerning the test purchase in July 2015 when the applicant was in charge. Mr Jones explained that it was normal for the store opening hours and the hours for the sale of alcohol to be the same. This was not the case, the person on duty was confused and their employment was later terminated as a result of the incident. In future the intention was that the licensing and opening hours would be the same.

PC Kevin Ellis confirmed with the applicant that the person arrested at Tondu had worked there between 2009 and 2015 when he was arrested. The applicant would have had access to payroll records for this period. Mr Jones confirmed that he had not been involved in the service stations since January 2016 and no longer had access to any papers. If there was evidence that he had been involved in any way then the police would have taken action against him.

The Legal Officer asked if the applicant was aware that there was a simple border agency check available on the website to check to see if staff were eligible to work in the UK? He was not aware of it. No pay records were available for the member of staff arrested because the applicant was no longer involved with Tondu service station. Head Office may be able to provide the information.

The Legal Officer asked for confirmation that the illegal immigrant had a NI number and that he had paid tax and national insurance on his income. The applicant confirmed that tax and national insurance contributions had been paid although he could not comment on how the illegal immigrant had an NI number.

PC Sarah Rowlatt asked for clarification regarding the status of the “gentleman minding the till” in February 2015. He was not employed and received no money for his services however it took some time before the applicant’s wife returned following the incident. The applicant was asked if all staff were trained. He explained that training had taken place and that this person had not been trained and should not have been involved.

The Licensing Enforcement Officer asked for more information relating to the July 2016 incident. Was the applicant aware of the licensing hours at that time? The applicant confirmed that he was and that he was in the kitchen at the time making tea and watching television. As soon as he noticed that alcohol was being sold he explained to the staff member to ensure no further sales were allowed. The applicant said that he was unable to close the actual chiller where alcohol was stored.

When questioned, Mr Jones explained that the conditions offered were consistent with the mandatory conditions with the addition of CCTV which was already in place. There was only one additional condition as reported earlier.

The applicant confirmed that he opened and closed the store and worked there all day every day. A part time member of staff worked a few hours each day during the week.

The applicant confirmed that the member of staff responsible for selling alcohol after hours on 6<sup>th</sup> July 2015 was 22 years old and also worked for Tesco and that training was provided “in house”.

Members queried some of the entries in the refusal register including the test purchase incident (recorded as an incident rather than a refusal) and the absence of some signatures in the refusal register. The Licensing Enforcement Officer queried the dates that the refusal register was with the police because it had not been available on 6<sup>th</sup> July 2015.

PC Kevin Ellis outlined his representations regarding the application. The previous Premises licence was surrendered by the applicant’s wife on 21 July 2015. The applicant had an interest in the business prior to and after its surrender and continued to do so as the current applicant. The couple lived directly above the premises and Mrs Nagendirarajah would continue to play an active role if the application was approved. The applicant had committed serious licensing and immigration offences at the premises as well as committing immigration offences at Tondu Service Station and Costcutter between 15 October 2012 and 27 January 2016. It would be inappropriate for Mrs Nagendirarajah to be the applicant due to her licensing convictions hence her husband had stepped into the role.

On 19 February 2015 an underage volunteer was sold 4 cans of cider and not asked for proof of age identification. The seller asked the volunteer his age and was told he was 16 to which he laughed and continued with the sale. When officers attended the premises, the person who had made the sale was working alone but Mrs Nagendirarajah soon appeared. When officers conducted a search of the premises a number of other offences were also detected. She was subsequently convicted on 23 November 2015 and received a total fine and costs of £1899.84. The staff member who had sold alcohol to the volunteer maintained that he did not work at the premises and it was later established that he was an illegal immigrant. Both the applicant and his wife were familiar with immigration procedures and there was a vast amount of documentation available to avoid employers committing offences.

The applicant had committed offences similar to those relating to his wife i.e. serious offences under the Licensing Act and serious immigration offences. On 16 May 2015 a migrant was found working at Tondu Service Station.

On 6 July 2015, a test purchase took place and alcohol was sold after the permitted hours. Three sales of alcohol took place outside the authorised hours and two further contraventions of the

licence shortly before the review hearing when the licence was already in jeopardy. The day before the hearing the licence was surrendered.

PC Kevin Ellis explained that in relation to the Operating Schedule, the applicant had disclosed very little as to how he would promote the licensing objectives and the application did not meet the criteria. He reported that additional information was available, an original document not signed or dated and a further document in relation to the test purchase not included in the original bundle. He concluded his representations.

PC Kevin Ellis was asked to confirm that some of the incidents reported, related to the wife of the applicant and not the applicant. PC Kevin Ellis confirmed that some charges related to the wife and this was the husband's application but both lived at the premises and this gave a background to the application. When challenged, he agreed that there had not been any proceedings taken against the wife relating to immigration. He explained the reasons why further action had not been taken following the incidents including the fact that it was "not in the public interest" to prosecute following the surrender of the licence.

The Senior Lawyer asked for clarification regarding the dates he was in charge at Tondu station. The dates supplied by the applicant were different to those reported by the police and it was difficult to establish who was in charge when the migrant was employed. The Sub-Committee was advised that it was more likely that the police dates were correct.

The applicant confirmed that he had destroyed all documents relating to staff when he left in January 2016.

CCTV was working when the 19<sup>th</sup> February incident took place but the applicant had been unable to record/burn the evidence and it was not chased at a later date.

The Licensing Enforcement Officer outlined the background information relating to the application. The applicant had failed to comply with a number of mandatory conditions relating to the Risk Register being unavailable for inspection and the requirement that all staff complete accredited training. The operating schedule failed to evidence how these issues would be addressed.

It was not clear exactly who was serving on 6<sup>th</sup> July when alcohol was sold outside the authorised hours and the names suggested did not appear in the training register.

Mr Jones requested confirmation that there were no representations relating to nuisance at the property. The Licensing Enforcement Officer confirmed that the applicant had referred to the issue in the operating schedule but there were no representations relating to nuisance.

Closing Statements were invited from the applicant and objectors.

Mr Jones on behalf of the applicant reminded the Sub-Committee that this would usually be a straight forward application with no issues relating to the premises. No action had been taken against the applicant for breach of licensing conditions or immigration. The Tondu station incident related to an overstayer already employed and inherited at the premises and he was not aware of the measure available to verify immigration status. He was present at the premises when the second incident took place but intervened as soon as he was aware sales were being made outside the agreed hours. Again no action was taken against the applicant. The applicant was responsible both legally and morally and this was his livelihood although he acknowledged that he needed to be more vigilant. The Licence should be allowed to the applicant with mandatory conditions plus the additional condition.

PC Kevin Ellis reminded the Sub-Committee that the applicant had a controlling interest in the business when his wife was the licensee and as both would continue to live at the premises their

history of offending did not promote the objectives. He referred to the incident where a staff member who was in the UK illegally, sold alcohol to a person who had confirmed they were underage. False details were later provided to the police. Another migrant illegally in the UK, was discovered at other premises under the control of the applicant in May 2015. A further incident took place on 6<sup>th</sup> July 2015 when a test purchase took place outside licensed hours, this was shortly before the review hearing was due to take place. The most serious licensing and immigration offences had been committed and the facts indicated that the application for a licence should be refused.

The Licensing Enforcement Officer referred to inconsistencies in the applicant's statement. He lived above and had an active role in the running of the premises and was in charge during the test purchase in July 2015. The applicant had extensive experience yet there was no confidence in his licensing skills and concerns re protection of children from harm.

Mr Jones confirmed the dates when the applicant was in charge at Tondu station and that he did "inherit" the overstayer.

The Sub-Committee adjourned at 1.20 pm re-convened at 4.10pm.

**RESOLVED:**

The Committee considered the application for a Premises Licence in respect of Pisgah Convenience Store and heard representations from the Applicant, the Police and the Licensing Enforcement Officer.

The Applicant's wife previously held the Premises Licence and had a number of convictions which related to a Licensing Enforcement visit which took place on the 19 February 2015. The Committee had not taken these into consideration when determining the application. However, the Committee had taken into consideration that the Applicant was aware of these convictions and was called to the premises on the night in question and was therefore aware of the events leading to those convictions. The Applicant was also involved with these premises at that time.

The Committee heard from the Police that after the enforcement visit, which took place on the 19 February 2015, the Police attended the premises again on the 6 July 2015. On this visit the Police witnessed three alcohol purchases, in less than an hour, outside the permitted hours allowed by the licence. The Applicant was on duty at the store when these breaches of the licence occurred and it was only 5 months after the last enforcement visit. The Applicant in his representations accepted that he was on duty on that date and informed the Committee that he was in the kitchen and did not see the sales taking place. The Licensing Enforcement Officer advised the Committee that the chillers were still switched on and illuminated and there was nothing to indicate to the customers that they could not purchase alcohol. This took place 16 days before a Review on the Licence was scheduled to take place.

The Committee found the Applicant's explanation unacceptable, the Applicant had received an accreditation in Licensing and knew that the licence did not allow the sale of alcohol at the time in question, and he did nothing to ensure the staff had received sufficient training so that a member of staff would have known the hours permitted for the sale of alcohol.

The Applicant had provided a witness statement and at paragraph 3 he stated that he became the proprietor of Tondu and Ton Pentre Service Station for the period 2009 to 2016 when he stated that he adhered to all the legal requirements in maintaining that business. However, the Police in their representations gave evidence that those premises were subject to a Border Agency visit during the Applicant's tenure and an over stayer was found working at those premises. The Police stated that the employee entered the UK on a Student Visa in September 2010 which expired in October 2012 and at that point was not legally entitled to work in this country. This took place after his brother in law, who was also an illegal immigrant, was caught at the Pisgah Street premises selling alcohol to a person under age in February 2015.

The Applicant in his representations advised the Committee that he inherited this employee from the previous owners of the Service Station and he did not make any checks on whether he was legally entitled to work in the UK. There was conflicting evidence as to when the Applicant became the owner of the business as he stated in his statement that it was 2009 and the over stayer only came to this country in 2010. However, Counsel for the Applicant had requested the Committee to take the Police dates of the period the licence was in the Applicant's wife's name, being the 10 February 2011. However, the Applicant had signed a statement of truth on his witness statement that the facts stated in that statement were true and the Committee was therefore entitled to take the date of 2009 as the date the Applicant became responsible for the premises.

The Home Office Guidance at 11.27 set out certain criminal activity that might arise in connection with licensed premises which should be treated particularly seriously. Contained in that list was "Knowingly employing a person who was unlawfully in the UK or who could not lawfully be employed as a result of a condition on that person's leave to enter".

The Applicant also produced a refusals register in support of his application. The Applicant had stated that there was a refusals register at the premises during the period that his wife was the Licence Holder. The Police and the Licensing Enforcement Officer gave representations that the member of staff and the Applicant's wife could not locate the register on the 19 February 2015, when the licensing enforcement took place at the premises. The Committee noted that the log, which was copied and produced by the Applicant in support of this application, did not contain certain entries from the enforcement visit that took place on the 19 February but the actual log produced today does contain entries which appear to have only been recently added.

The Committee considered the licensing objectives and the representations made by the Applicant, the Police and the Licensing Enforcement Officer and decided that to grant a licence to the Applicant would undermine the licensing objectives for the following reasons:-

1. The Applicant was the person in charge of the Pisgah Street premises on the 6 July 2015 when enforcement officers witnessed three breaches of the premises licence, the Committee found this particularly surprising when taking into consideration the Applicant was called to the premises when an enforcement visit took place at the premises on the 19 February 2015. The Committee found that the Applicant should have been

particularly vigilant and should have ensured that staff under his control on that evening were aware of the conditions on the licence. The Applicant did not accept any responsibility for his actions on the night in question and had tried to pass the blame onto one of the employees at the premises.

2. The Applicant was the person responsible by his own admission for the garage premises at Tondur when an illegal over stayer was found to be working at those premises. Again the Applicant does not try to take responsibility for this and has maintained that it was the fault of the previous manager who ran the premises. The evidence given by the Applicant in his witness statement contradicts this. In any event it was a simple process to check whether a person had the right to work in the UK and it was the Applicant's responsibility to ensure that every member of staff working for him had the right to do so. Again he should have been particularly vigilant when taking into consideration his own brother in law had been caught selling alcohol to a person underage at the Pishah Street premises when he was illegally in this country.

On this basis the application was refused.

The meeting closed at 4.40 pm