

**WEST LINDSEY DISTRICT COUNCIL**

MINUTES of the Meeting of the Licensing Sub Committee held in the Trent Meeting Room -  
The Guildhall on 10 May 2017 commencing at 10.00 am.

**Present:**

Councillor David Cotton  
Councillor Mrs Pat Mewis  
Councillor Mrs Jessie Milne

**In Attendance:**

Phil Hinch	
Katie Coughlan	Governance & Civic Officer
Jana Randle	Governance and Civic Officer

**Apologies:**

**Membership:**

**1 TO ELECT A CHAIRMAN FOR THIS MEETING ONLY**

**RESOLVED** that Councillor Cotton be elected Chairman of the Licensing Sub-Committee for this meeting.

Councillor Cotton took the Chair for the remainder of the meeting and round the table introductions were made.

**2 MEMBERS' DECLARATIONS OF INTEREST**

Councillor Cotton declared a personal non-pecuniary interest in the following two items of the business on the grounds that he was a serving Magistrate, and such matters could be appealed through the Magistrates' Court. In the event that any appeals in connection with these two cases did arise, Councillor Cotton would not be permitted to consider the Appeals and would absent himself from the bench.

**3 LICENCE HEARINGS**

**4 EXCLUSION OF PUBLIC AND PRESS**

Lincolnshire Police had previously requested that the Review Hearing be held in closed session. However, they indicated to the Committee that they were happy for the proceedings and all information to now be discussed in open session.

All parties indicated their agreement and it was therefore:-

**RESOLVED** that in accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 – the public and press not be excluded from the remainder of the hearing and as such this proceed in open session.

## **5 102 TRINITY STREET**

**Licence Number: 32UHB01701**

**Hearing Type: Review of a Premises Licence**

**Applicant: Lincolnshire Police**

**Premises: 102 Trinity Street, Gainsborough, Lincolnshire DN21 1HS**

**Premises Licence Holder: Mr Zydrunas Gaudbys**

The Chairman, through the Licensing Team Manager, confirmed that all parties had been given notice to attend the Hearing, and advised that the Hearing would proceed in their absence.

The Council's Legal representative set out the procedure that would be followed, as detailed in Appendix A to the Agenda.

The Licensing Team Manager was requested to present the report which set out the background leading to the application for review, namely a failure to uphold the licensing objectives of "the prevention of crime and disorder" and "public safety" by exposing and keeping contraband alcohol for sale at the premise, failing to produce a premises licence and failing to comply with conditions within the premise licence.

Appended to the report were the application for review including further details of the grounds on which it was being made; premises licence; and witness statements from the police.

The options available for the Committee were set out in paragraph 6.2 of the report.

Lincolnshire Police, the Applicant, were invited to present their case, calling any witnesses in support of their case.

The circumstances leading to the application for review were presented to the Sub-Committee by Sgt Enderby. In opening Sgt Enderby advised that whilst it was acknowledged the Hearing related to 102 Trinity Street he would be making reference to circumstances also witnessed at 128 Trinity Street (to be considered later in the meeting) as the premise license holder of 102, played a role in both premises and the events at each were intrinsically linked.

The review request had been submitted when a licence compliance check had revealed a number of issues of concern. It was also noted that the licence compliance check had been prompted as a result of an earlier licence compliance check at 128 at which Mr Zydrunas

Gaubys was also responsible for day to day operations, but not the licence holder, and where a number of issues of concern had also been witnessed.

Officers had first attended 128 Trinity Street on 23 February 2017 as part of a routine compliance check. The female assistant on duty did not appear to have any knowledge of what this was and indicated that she had only worked in the shop a few weeks, the owner was Mr Zydrunas Gaubys and she did not know the person named as the licence holder.

The licence itself was not on display, as was required by law. It was not possible to view any CCTV footage as the female on attendance did not know how to work the equipment; another condition of the licence. The level of training undertaken by staff was therefore questioned. A number of bottles, 40+, were seized as being of questionable origin, suspected smuggled contraband, due to them not having relevant duty stamps on, leading to the assumption that duty had not been paid. The "owner" as referred to by the female assistant was unable to be interviewed on site however Police Officers did speak with him over the phone to advise that they would be seizing goods. Mr Gaubys advised them that it was the last day of trading at 128 and he would be opening a new store at 102 Trinity Street, he was currently travelling back from London with stock for the new premise and could not therefore come to the store in person.

S144 of the Licensing Act made the storing of contraband on a licensed premise a criminal offence. No explanation for the stock had been offered by the female assistant and she appeared unknowledgeable regarding the requirements and responsibilities of her position.

Mr Gaubys had been managing day to day operations at 128 Trinity Street since November 2016. However he had never been the licence holder or nominated DPS at the premise. There was an attempt to transfer the licence, however the application had never been completed in its entirety, thus had not transferred.

Lincolnshire Police were of the view that it was irrelevant that the day of the seizure was supposedly the last day of trading. In light of Mr Gaubys involvement in 128 Trinity Street and the fact he planned to open a further store at 102, Lincolnshire Police on 28 February 2017 conducted a routine licence compliance check at 102 Trinity Street.

On entering the premise the female shop worker was asked for a full copy of the licence, she appeared to have a limited understanding of what was being requested and contacted Mr Gaubys, who indicated he would come to site. The full licence was not on display, as was required by law.

On further inspection of the premise, Officers had found alcohol on sale above the %proof permitted by the licence, an Offence under Section 136 of the LA. None of the alcohol was priced, and on questioning the female shop assistant, she verbally offered prices to Officer, these were shared with the Committee and contained within the written information.

A number of bottles were seized, firstly because the premise did not have a licence to sell them and was in breach of conditions applied, and secondly because their origin was questionable, due to them being sold at below the HMRC mandatory selling price, leading to the assumption that duty had not been paid.

On arrival at the premise, Mr Gaudbys was advised of the Officers discovery and questioned regarding staff training, advising that he had only just opened and hadn't trained his staff as yet. This was a further breach of the licensing conditions. Having requested sight of the refusals register Mr Gaudbys firstly appeared confused and then admitted that one did not exist, again a breach of the conditions.

Mr Gaudbys was unable to produce any purchase documentation for the beer seized, again another breach of the licensing conditions and further suspicion that the goods were illegitimate.

Finally, it was not possible to view any CCTV footage as the female on attendance did not know how to work the equipment; another condition of the licence.

Sgt Enderby considered there was evidence to suggest that there had been multiple breaches of the licensing conditions and a clear disregard for the licensing objectives.

In relation to seized goods from 128 Trinity Street, Mr Gaudbys under caution had advised Police Officers that he purchased the goods from an unknown male from the back of a car and had received a formal caution under s136 of the Act. Cautions could be given when an offence had been admitted and the perpetrator had a good history.

Sgt. Enderby referred to S27 of the Guidance which stated certain offences, including that of possession of smuggled goods where serious enough that the Licensing Committee should consider revoking a licence at the first instance.

Sgt Enderby suggested that as the owner of three shops Mr Gaudbys should be considered a business man, and as such should have been well aware of his responsibilities under the Act.

He urged the Committee to revoke the licence in light of the evidence presented.

The Licensee for 102 and his representative, on being given the opportunity to ask questions of the Police, indicated they had no questions to ask.

The Committee were then afforded the opportunity to ask questions of the Police and asked them to expand on the indicators they used to detect smuggling. These were relayed to the Committee and it was suggested that such small retailers could not afford "loss leaders" as in large retail stores. It was stressed that the offence of keeping smuggled goods could be considered proven unless the defence could prove to the contrary, nor did the perpetrator need to know the goods were smuggled. In response to the Committee's questions the Police also confirmed that the caution given to Mr Gaudbys was in effect a criminal conviction, would be recorded and would be disclosable.

The Licensee with assistance from his representative then presented his case.

Mr Gaudbys claimed he had been selling alcohol at a reduced rate in order to be able to compete with other shops in the vicinity. Highly priced alcohol would not be bought by anyone, and Mr Gaudbys did not consider, nor want alcohol sales to be his primary source

of income. Regarding the contraband found at 128, Mr Gaudbys advised this was already on the premise when he took over, he was not aware of this and was not aware the shop assistant had put in on the shelves. Mr Gaudbys went on to state that no super strength lagers were now being sold and he had not being aware of this condition. All staff had received training and understood how to operate the CCTV system.

The Applicant, Lincolnshire Police, took the opportunity to further question the Licensee seeking further information on who had bought the stock at 128, where the receipts were, why staff seemed to be unaware of their responsibilities and appeared to have little or no training and why numerous conditions were being breached.

The Committee also sought information from the Licensee, enquiring as to why he was unclear of his responsibilities if he had a run another premise for over a year? Why despite the police raising concerns regarding the operation of 128 identical issues and practices were seen at 102? Why the licensee had not being suspicious when purchasing from the "back of cars"?

On being questioned by the Police and Members of the Sub-Committee, the Licensee advised that the female assistant in 128 had worked there previously, under a different manager, and he had presumed she had been trained. He was unaware of the stock at 128. Mr Gaudbys stressed that he no longer purchased alcohol, where invoices and receipts could not be provided, he fully understood now that he needed receipts. He disputed that he continued bad practice in his new shop at 102, all staff were now trained and this incident had been a one off.

The Sub-Committee were sceptical and in response to a question Mr Gaudbys confirmed that he could read English. Members were of the view therefore that Mr Gaudbys could read the licensing conditions, had had explained to him the licensing objectives and his responsibilities and yet appeared to have failed to uphold both. He had not taken responsibility for practices within his premises and staff should have been fully trained before the premises opened.

The Police in summing up stressed to the Committee that Mr Gaudbys had admitted and been criminally convicted by way of formal caution regarding the keeping of smuggling goods, this was not disputed. They had presented evidence of multi breaches of the licensing conditions and only Police involvement and intervention had made Mr Gaudbys adhere to the requirements and responsibilities.

The Licensee in summing up stated he'd made a mistake, this had been a one off and he was fully complying with all of his licence conditions now and understood his responsibilities.

The Legal Advisor indicated that there were no matters which she needed to clarify.

The Sub-Committee then retired to consider their decision. The meeting was therefore adjourned at 11.20 am.

The meeting reconvened at 11. 53 am.

The Chairman then read out the sub-committee's decision and the reasons for reaching said decision.

“We have considered all matters put before us and listened carefully to what has been said to us today.

We are satisfied that the premises owner has not complied with the conditions of the alcohol licence which was only granted in January.

We have heard that alcohol was purchased from the back of the car and this should have raised concerns that the alcohol was illegitimate and likely contraband.

We have also heard from Lincolnshire Police that alcohol was seized, counterfeit goods without duty paid, contrary to the Law.

Shop staff have not been trained to operate the CCTV or to be able to comply with the Licensing condition that recordings be produced.

We have also heard that there was no register for the refusal of sale of alcohol. This is contrary to the licence conditions.

There was alcohol on sale at more than 6.5% by volume, again breaching the licensing conditions.

There is a disregard for the conditions of the licence and a failure to promote the licensing objectives. This is specifically the objective of Crime and Disorder.

The alcohol, which was counterfeit, was on a premises over which you had control. The Act states that you do not have to know the goods were smuggled to be guilty of the offence.

You have evaded the legal duty to be paid to HMRC. Also you have failed to provide any receipts or a paperwork audit trail for those items which are counterfeit or that purchased from the back of the car. Also that stock already held.

In accordance with the guidance, where you fail to promote the crime and disorder objective the Committee should consider revoking the Licence.

Given the failings to comply with the licence conditions and also the storage of counterfeit goods, we feel these failings and offences and failing to promote the Licensing objectives, the Committee, following the guidance, have no choice other than to revoke the licence for 102 Trinity Street.”

The Chairman advised that all parties would be notified of the decision in writing within five working days of today's hearing and reminded those present of the right to appeal to the Magistrates' Court within 21 days of receiving such notice.

The Hearing for 102 Trinity Street concluded at 11.55 am and Mr Gaudbys and Ms Latute

left the meeting.

The Hearing for 128 Trinity Street commenced at 12.15pm and Councillor Cotton resumed the Chair.

## **6 MEMBERS' DECLARATION OF INTEREST**

Councillor Cotton re-stated his previous declaration.

## **7 EXCLUSION OF PUBLIC AND PRESS**

Lincolnshire Police had previously requested that the Review Hearing be held in closed session. However, they indicated to the Committee that they were happy for the proceedings and all information to now be discussed in open session.

All parties indicated their agreement and it was therefore:-

**RESOLVED** that in accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 – the public and press not be excluded from the remainder of the hearing and as such this proceed in open session.

## **8 128 TRINITY STREET**

**Licence Number: 32UHB15005**

**Hearing Type: Review of a Premises Licence**

**Applicant: Lincolnshire Police**

**Premises: "Polish Deli" 128 Trinity Street, Gainsborough, Lincolnshire DN21 1JD**

**Premises Licence Holder: Mrs Joanna Mielczarek**

The Chairman, through the Licensing Team Manager, confirmed that all parties had been given notice to attend the Hearing, and advised that the Hearing would proceed in their absence. It was noted that the License Holder had failed to acknowledge any recent correspondence however all previous known addresses had been used in an attempt to contact her.

The Council's Legal representative set out the procedure that would be followed, as detailed in Appendix A to the Agenda.

The Licensing Team Manager was requested to present the report which set out the background leading to the application for review, namely a failure to uphold the licensing objectives of "the prevention of crime and disorder" and "public safety" by exposing and keeping contraband alcohol for sale at the premise, failing to produce a premises licence and failing to comply with conditions within the premise licence.

Appended to the report were the application for review including further details of the

grounds on which it was being made; premises licence; and witness statements from the police.

The options available for the Sub-Committee were set out in paragraph 6.2 of the report.

The Licensing Manager at the request of the Sub-Committee confirmed that an application had been made to transfer the licence, however this had not been completed correctly, returned to Mrs Mielczarek and nothing further received. Therefore she was still the responsible licence holder, although did not appear to have had any day to day dealings with the business since late 2016.

Lincolnshire Police, the Applicant, were invited to present their case, calling any witnesses in support of their case.

They indicated they had nothing further to add to their Case, which had been made during the earlier Hearing, other than despite attempts to contact Mrs Mielczarek regarding issues at the premises nothing had been forthcoming.

The Sub-Committee asked not questions

The Licensee was not present and therefore did not present her case or ask any questions of the Police.

In summary up, Lincolnshire Police expressed grave concerns that in light of the issues, despite Mrs Mielczarek having not being present, ultimately all the responsibility had sat with her as the Licence Holder and she had not acted in manner that could be regarded as fit and proper.

The Legal Advisor indicated that there were no matters which she needed to clarify.

The Sub-Committee then retired to consider their decision. The meeting was therefore adjourned at 12.25 pm.

The meeting reconvened at 12.40 pm.

The Chairman then read out the sub-committee's decision and the reasons for reaching said decision.

"We have considered everything put before us today.

The evidence from Lincolnshire Police shows that there was counterfeit goods stored on the premises in contravention of the licensing objectives.

The Licence holder and DPS was not present at the hearing but while the premises were being operated by Mr Zydrunas Gaubys the licence holder was still Mrs Joanna Mielczarek, following an unsuccessful attempt to transfer the licence.

In accordance with guidance, where certain criminal activity has been carried out at the premises we should consider revocation of the licence in the first



instance.

We therefore revoke the licence for 128 Trinity Street Gainsborough”

The Chairman advised that all parties would be notified of the decision in writing within five working days of today’s hearing and reminded those present of the right to appeal to the Magistrates’ Court within 21 days of receiving such notice.

The Hearing for 128 Trinity Street concluded at 12.42pm

The meeting concluded at 12.42 pm.

Chairman