

SHEFFIELD CITY COUNCIL

Licensing Sub-Committee

Meeting held 3 September 2013

PRESENT: Councillors Clive Skelton (Deputy Chair), Neale Gibson and
Cliff Woodcraft

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1. APOLOGIES FOR ABSENCE

1.1 An apology for absence was received from the Chair (Councillor John Robson).

2. EXCLUSION OF PUBLIC AND PRESS

2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

3.1 There were no declarations of interest.

4. LICENSING ACT 2003 - SPAR (FORMERLY BARGAIN BOOZE), 392-394 RICHMOND ROAD, SHEFFIELD, S13 8LZ

4.1 The Chief Licensing Officer submitted a report to consider an application made by Sheffield City Council Trading Standards, under Section 51 of the Licensing Act 2003, for a review of the Premises Licence in respect of the premises known as Spar (formerly Bargain Booze), 392-394 Richmond Road, Sheffield, S13 8LZ.

4.2 Present at the meeting were David Palmer (Trading Standards, Applicant), Thalib Hussain (Designated Premises Supervisor, Spar), Julie Hague (Sheffield Safeguarding Children Board), Sean Gibbons (Health Protection Service), Matt Proctor (Senior Licensing Officer), Kavita Ladva (Solicitor to the Sub-Committee) and John Turner (Democratic Services).

4.3 Kavita Ladva outlined the procedure which would be followed during the hearing.

4.4 Matt Proctor presented the report to the Sub-Committee and it was noted that representations had been received from the Sheffield Safeguarding Children Board and the Health Protection Service and were attached at Appendices 'B' and 'C' to the report. South Yorkshire Police had also indicated that they were fully supportive of the action being taken by Trading Standards, and whilst they had not made any formal representations, nor attended the hearing, they submitted a witness statement, which was contained in Appendix "A" to the report.

4.5 David Palmer reported that on 8th February 2013, the Police received a call from a member of the public, informing that he believed he may have been sold counterfeit vodka and on 9th February 2013, the Police visited the premises and seized a large quantity of Kommissar Vodka and Selekt Vodka. Samples of the drink were

passed to Trading Standards Officers, who examined the vodka on 11th February 2013, and carried out informal screen tests on the products. The ABV of both products was well below that declared and therefore, formal samples were taken and sent for analysis. The Selekt Vodka was found to contain industrial contaminants, including isopropanol, tertiary-butanol and chloroform, and had an Alcohol by Volume (ABV) of 24%. The Kommissar Vodka contained isopropanol and tertiary-butanol, and had an ABV of 22.2%. It was determined that neither product could legally be called vodka and the trade mark holders confirmed the products as being counterfeit. Mr Palmer stated that counterfeit and illicit spirits were known to contain dangerous industrial chemicals and other contaminants, and were made without the quality control measures employed by genuine brand manufacturers. Such products had no genuine batch codes or identification details of the actual manufacturer, which made traceability of the products impossible. Also, the ABV declared on the label was uncontrolled and often inaccurate. As a result, there was a risk to the public when consuming these products, particularly during binge drinking and even when being consumed more responsibly on a regular basis. He stated that children and young people were particularly at risk due to the likely effects of the illegal chemical content of such products and the consistency of the declared ABV. In terms of the visit to the premises by Trading Standards Officers, it was found that the illicit vodka was kept separately, behind the counter, whereas legitimate vodka was displayed on the gantry. The shop was selling two 35 cl bottles of the Kommissar Vodka for £8.00, which was less than the excise duty and VAT payable on the product. It was deemed that selling illicit vodka at below duty/VAT prices also created unfair competition for traders selling legally and responsibly. The licensee had admitted to purchasing the products from a non-legitimate source and had been unable to produce receipts or identify his supplier and as a result of this, he knew, or should have known that he was entering into an illegal activity. Mr Palmer stated that Thalib Hussain was prosecuted by Trading Standards, and he appeared at the Magistrates Court on 28th August 2013, pleading guilty to two offences. His total fine, including costs, was £582 and the Court ordered the seizure of 674 counterfeit bottles of vodka. Trading Standards Officers viewed Mr Hussain's actions as a deliberate act and considered that his actions were wrong in terms of both tax evasion and posing a risk to the health of those purchasing the counterfeit vodka.

- 4.6 In response to questions from Members of, and the Solicitor to, the Sub-Committee, and Matt Proctor, Mr Palmer stated that whilst he was not qualified to report on what damage could be done to the health of those people drinking the vodka, he stated that the industrial contents of the drink were highly likely to have an adverse effect on their health. Whilst there were bottles of genuine vodka on the shelves in the premises, the counterfeit vodka was under the counter and in the storeroom at the rear of the premises. Mr Palmer was not able to comment on the selling methods of the counterfeit vodka, but indicated that some customers may have known that cheap vodka was available at the shop or that they would simply ask the shopkeeper whether they had any cheap spirits for sale. Mr Palmer confirmed that it was Thalib Hussain, Designated Premises Supervisor, who was prosecuted for the offence as he was in control of the shop when officers visited the premises. The fine imposed by the Magistrates Court was fairly representative of fines imposed for similar offences in Sheffield, but derisive compared to similar offences in other areas of the country. Whilst there was no proof to show that the

counterfeit vodka had been sold to young people, selling the vodka so cheap would make it attractive to, and at a price available to purchase by, young people and adults on low incomes, including benefit claimants. Mr Palmer confirmed that, after the tests carried out by Trading Standards Officers, the contents were typical of those usually found in suspected counterfeit vodka. He confirmed that this was the first time Trading Standards had prosecuted Mr Hussain and that the only other record of action taken against the premises related to a caution for Mr Hussain and Faisal Shahzad, Premises Licence Holder, following the sale of cigarettes to a minor. Mr Palmer stated that, in the opinion of Trading Standards Officers, Mr Hussain was the protagonist in terms of the actions which led to his prosecution in that he admitted that he had purchased the product from a non-legitimate source. The only evidence that the premises was located in a 'hot spot' area was based on the version of information by the Police. In terms of identifying the vodka as counterfeit, Mr Palmer stated that whilst the labels and the bottles appeared to be genuine, there were a number of signs that experienced Trading Standards Officers noticed. This was based on information provided by genuine manufacturers, in confidence, to Trading Standards.

- 4.7 Julie Hague put forward her representations on behalf of the Sheffield Safeguarding Children Board, referring to the dangers of counterfeit alcohol, referring specifically to an incident in 2012, when a Sheffield student suffered serious and concurring eye problems after drinking counterfeit vodka. She referred to the dangers caused by young people being attracted to premises selling counterfeit vodka on the basis that it was cheap, and many young people were able to afford it. Ms Hague stated that she visited the premises on 8th July 2013, and met with Mr Hussain to discuss what safeguarding systems were in place to prevent underage sales and whilst he was in possession of a Responsible Retailer pack, which had previously been provided to him by Trading Standards, she noted that training records had not been completed between 24th September 2010 and 10th May 2013, and that the refusals log contained a last entry dated February 2012. There was also evidence to suggest that the age verification scheme operated at the premises was neither robust or consistent and may have allowed children and young people to access alcohol through underage sales. Ms Hague stated that the premises was located in an area that had been identified by the Police as a 'hot spot' area, where underage drinking and associated anti-social behaviour took place, and that partnership work was currently being undertaken to set up a 'Community Alcohol Project' (CAP) to address this issue. All licensed premises in the area had been invited to participate in the CAP and future compliance with the Project criteria should assist Mr Hussain to improve operational standards with regard to preventing underage sales. During her discussions with Mr Hussain, he admitted that one of the reasons he was selling the counterfeit vodka was to compete with another licensed premises across the road which was also selling counterfeit vodka. Ms Hague concluded by stating that the activities at the premises represented a significant risk to the health of children and young people.
- 4.8 In response to questions from Members of, and the Solicitor to, the Sub-Committee, Ms Hague stated that, in terms of the identification of a 'hot spot' area, the Police analysed the number of complaints received regarding drinking and associated anti-social behaviour in any specific area, then if the level of complaints

are at a specific number, they then initiated a CAP. The Board did not consider it reasonable that there had been no further entries in the refusals log since the one dated February 2012, on the basis that calls had been received from the local secondary school, expressing concerns of underage drinking in the area. There were no details to show that the concerns related to a specific licensed premises in that area, so a representative of the Board visited all licensed premises to advise them of their responsibilities in terms of underage sales. There was no evidence to show that Mr Hussain had sold alcohol to under 18 year olds. Ms Hague accepted the fact that young people were able to access and drink alcohol in their own homes and whilst the Board had concerns regarding this, there was little or nothing it could do other than to continue educating young people on the dangers of drinking alcohol. Ms Hague stated that she had made attempts to contact and speak to Mr Shahzad, without success, and had always been given Mr Hussain's name as the person to deal with.

- 4.9 Sean Gibbons stated that he had visited the premises on 18th June 2013, and noted several concerns with regard to the electrical installations, and made arrangements for a further visit on 20th June 2013, to discuss the issues with Mr Hussain. He was informed that an electrical engineer had been employed to undertake the relevant works in order to provide a satisfactory Electrical Safety Certificate to ensure that the electrical installation was in a safe condition. It was agreed that the Certificate would be provided to the Health Protection Service no later than 10th July 2013. Mr Gibbons circulated photographs of the electrical installations which had caused such concerns. Following his visit, Mr Gibbons sent a letter to Mr Hussain and Mr Shahzad, expressing his concerns and reminding them of their requirement for the relevant works to be undertaken and to provide a satisfactory Electrical Safety Certificate at the earliest possible opportunity. It was also pointed out to them that he had not received the Certificate by the agreed date of 10th July 2013. Mr Gibbons made a further visit to the premises and as neither Mr Hussain or Mr Shahzad were present, he left a card and a telephone message for them to respond. Neither Mr Hussain or Mr Shahzad responded. On 26th July 2013, Mr Gibbons served Improvement Notices on Mr Hussain, Mr Shahzad and the occupier ???. Mr Gibbons made a further visit to the premises on 28th August 2013, and met Mr Hussain. Mr Hussain was still not able to produce an Electrical Safety Certificate, although there was some evidence that some of the required works had been undertaken. Mr Hussain was further requested to provide an Electrical Safety Certificate by 5th September 2013, in order to prove that the electrical installation was in a safe condition.
- 4.10 In response to questions from Members of, and the Solicitor to, the Sub-Committee and Matt Proctor, Mr Gibbons referred to the photographs showing the areas of concern regarding the electrical installation at the premises, and confirming that there was a risk of both electrocution and fire, as well as confirming that the electrical works, prior to any recent upgrade, had not been undertaken by a competent electrician. He confirmed that the Improvement Notice served on 26th July 2013, contained a request for the production of an Electrical Safety Certificate. Mr Gibbons stated that his involvement with the premises had involved discussions with Mr Hussain only and that he had never met Mr Shahzad.
- 4.11 Thalib Hussain stated that he was responsible for purchasing stock for sale at the

premises, and would purchase stock from Bargain Booze or Bookers Cash and Carry. During one visit to the Cash and Carry, he was approached by someone who informed him that he had ordered a considerable amount of vodka and offered to sell him some, at cost price. The man informed Mr Hussain that he worked for NISA, and informed him that the vodka was NISA's own brand, with the NISA logo. On the basis that the offer appeared genuine, Mr Hussain agreed to purchase a number of bottles. Arrangements were made to sell the 35 cl bottles at £7.00 each and he stated that there was proof on the till to show this was the case. Mr Hussain stressed that he was not aware, at the time of agreeing to purchase the vodka, that it was counterfeit, and that he had received no complaints about the vodka until the complaint received on 8th February 2013. He stated that there was some of the vodka on one of the shelves in the premises, as well as a number of bottles in a box on the floor, ready to be put on the shelf. Mr Hussain stated that, when in Court, the prosecutor stated that the vodka was not as dangerous as first thought, and would only result in an upset stomach for someone drinking a large amount. He was also informed that if the contaminants had been more dangerous, he would have received a much higher fine than £200. He stated that he had worked in the shop for five years and apart from the caution he had received relating to the underage sale of cigarettes, there had been no other issues in terms of the operation of the premises. He stated that staff received regular training in terms of underage sales.

- 4.12 In response to questions from Members of, and the Solicitor to, the Sub-Committee, Matt Proctor, David Palmer, Julie Hague and Sean Gibbons, Mr Hussain stated that Mr Shahzad had not been able to attend the hearing as he was not well. He stated that the current name of the premises was Spar, but was Bargain Booze at the time of the incident, and that Spar were aware of the prosecution. When purchasing stock at the Cash and Carry, Mr Hussain confirmed he would always receive an invoice which included a reference to VAT in terms of the purchase of alcohol. When purchasing the counterfeit vodka, he confirmed that he did not receive an invoice, but believed the person selling him the alcohol had already paid the VAT to NISA. The counterfeit vodka was added to the premises stock system, and marked at 20% VAT although Mr Hussain had not declared this. In terms of underage sales, it was stated that although training manuals were kept for staff members, they were not maintained or signed. There were two posters advertising Challenge 25, one behind the counter and one elsewhere on the premises. In terms of current staff training regarding underage sales, Mr Hussain stated that they used the training manuals provided by Sheffield Safeguarding Children Board, whereby staff members would read the guidance and test themselves at the end. There was no face to face training, other than Mr Hussain asking staff members questions on the guidance. He had not received any training documents or manuals from Spar. Mr Hussain stated that it was only himself who pleaded guilty at the Magistrates Court on 28th August 2013 and that Mr Shahzad was his brother-in-law, and that he had informed the Licensing Section that Mr Shahzad had moved from 34 to 28 St Ronan's Road. In terms of the reasoning behind the purchase of the counterfeit alcohol, Mr Hussain stated that he normally purchased alcohol direct from Bargain Booze or Bookers Cash and Carry, but as cheap alcohol was being sold by one of the other licensed premises in the area, he wanted to attract people to purchase alcohol from his shop. Mr Hussain confirmed that he and his wife were responsible for the day to day operation of the premises

and that whilst Mr Shahzad had a share in the business, he was not involved in the day to day operations. When purchasing the counterfeit vodka from the man at Bookers Cash and Carry, Mr Hussain believed that he was a genuine and responsible shopkeeper as he was registered as a member of the Cash and Carry. Whilst the man did not have any bottles of the vodka when Mr Hussain agreed to purchase it, the man later visited his shop and brought a bottle round. Mr Hussain stated that whilst he had a business card and telephone contact number for the electrical contractor undertaking the works at the premises, he was unable to recall his name or the company he worked for. The contractor had informed him that due to the level of works required, it would take some time to complete the works and therefore he would not be able to furnish him with an Electrical Safety Certificate until such works had been completed. Mr Hussain confirmed that he was not involved in any other businesses and that he had lost the franchise in respect of Bargain Booze around June/July 2013. He also confirmed that he was the sole trader in respect of the business, and was not working in partnership with Faisal Shahzad. He explained that the reason why Mr Shahzad had not attended the meeting requested by Julie Hague, on 14th June 2013, was due to the fact that the invitation had been sent to an incorrect address. He confirmed that he had never been involved in the operation of any other licensed premises. Mr Hussain accepted that he was not fully aware of the contents of the vodka, but believed the man offering it for sale was genuine, and he also stated that it was not possible to predict what type of vodka could be harmful or not. He stated that, during a meeting with Julie Hague on 8th July 2013, he could not recall saying that the shop across the road was selling cheap vodka, but recalled stating that the shop was selling cheap drink. Mr Hussain confirmed that the head office address for the business was the premises address.

- 4.13 Mr Hussain summarised his case, indicating that he had put the proper safeguards in place to ensure that this kind of incident would not happen again.
- 4.14 RESOLVED: That the public and press and attendees involved in the application 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.
- 4.15 Kavita Ladva reported orally, giving legal advice on various aspects of the application.
- 4.16 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 4.17 RESOLVED: That, in the light of the information contained in the report now submitted, the additional information now circulated and the representations now made, the Sub-Committee agrees to revoke the Premises Licence in respect of the premises known as Spar (formerly Bargain Booze), 392-394 Richmond Road, Sheffield, S13 8LZ, for the following reasons:-
- (a) Mr Hussain has admitted and has been convicted of serious criminal activity in relation to the purchase of illicit alcohol;

- (b) he has a complete disregard for the law and was prepared to breach the law wherever possible, including VAT evasion;
- (c) he has failed to demonstrate that the staff had full training in accordance with guidance and regulations and furthermore, had failed to keep adequate paper records for running his business;
- (d) he has failed to provide a valid Electrical Safety Certificate for his premises, despite repeated requests to do so; and
- (e) he has not shown any responsibility or remorse for his actions and thus, should not be allowed to have any involvement in the retail licensing trade.

(The full reasons for the Sub-Committee's decision will be included in the written Notice of Determination.)

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