

**LICENSING PANEL (425)**

**22 July 2019 at 10.00 am**

**PRESENT:** Councillors: M. Hussain, Mead and Taylor

**OFFICERS:** Holly Mernagh - Senior Licensing Officer (Item 5)  
 Sarah Vippond - Senior Licensing Officer (Item 6)  
 Raj Papat - Solicitor, Clerk to the Panel  
 Bert Siong - Democracy & Scrutiny Officer

**9. ELECTION OF CHAIR (REF: 1)**

**Resolved:** That Councillor M. Hussain be elected Chair of Panel No.425.

**10. MINUTES (REF: 2.1 AND 2.2)**

**Resolved:** That the minutes of the Licensing Panel meetings held on 17 December 2018 and 1 March 2019, be agreed as true records and the Chair be authorised to sign them.

**11. APPLICATION FOR REVIEW OF PREMISES LICENCE, HIGH TOWN SUPERMARKET, 33-35 HIGH TOWN ROAD, LUTON (REF: 5)**

**PRESENT**

**APPLICANT:** Bill Masini (Trading Standards)

**LICENCE HOLDER:** KANTHARUBAN  
 THIRUGNANASAMPANTHAR (Luton Star Limited)

**LICENCE HOLDER'S REPRESENTATIVES:** N. MATTHEWS (COUNSEL)

**LICENCE HOLDER'S PERSONAL INTERPRETER:** Name not recorded

(Note: All parties present introduced themselves)

Mr Matthews, Counsel informed the Panel of the presence of the interpreter for Mr Thirugnanasampanthar, the Licence Holder, who had been arranged by his instructing solicitors. The need for an interpreter had not previously been communicated to the Licensing Service.

The Chair explained the hearing could not proceed without an official interpreter engaged by the Council.

Mr Matthews said they had not been informed of the rule on the matter and confirmed his client's English was not good enough to proceed without an interpreter.

**Resolved:** That the application for review of the premises licence, in relation to High Town Supermarket, 33-35 High Town Road, Luton be adjourned to a date to be fixed, to enable an official Tamil interpreter to be engaged by the Council for the hearing.

**11. APPLICATION FOR REVIEW OF PREMISES LICENCE, 7 To 11, 135 HIGH TOWN ROAD, LUTON (REF: 6)**

**PRESENT**

<b>APPLICANT:</b>	PC LEANNE KIRSOP (Beds Police) STACEY GRUNDY (Observer, Beds Police)
<b>LICENCE HOLDER:</b>	MAZAMAL HUSSAIN
<b>LICENCE HOLDER'S REPRESENTATIVES:</b>	MISS FISHER (Counsel)
<b>INTERESTED PARTIES:</b>	BILL MASINI (Trading Standards) CHLOE STEPHENSON (Public Health) TONY IRELAND (Licensing Service)

(Note: All parties present introduced themselves)

The Clerk to the Panel explained the procedure at oral hearings before the Council's Licensing Panel.

Sarah Vippond, the Licensing Officer reported on the application from PC 138 Darren Welch, on behalf of the Chief Constable of Bedfordshire Police for the review of a Premises Licence in respect of 7 to 11, 135 High Town Road, Luton.

She said the premises were a supermarket and drew the Panel's attention to the appendices, comprising Appendix A - the Premises Licence, Appendix B - the Review Application, Appendix C - Supporting Information, Appendix D - representations from Responsible Authorities and Appendix E - representations from Interested Parties.

In relation to Appendix C, she tabled an additional statement from the Police, which had been omitted from circulation in error. The Panel allowed all parties to read the contents of the statement prior to proceeding with the meeting. There being no representation from Miss Fisher on behalf of the Licence Holder, the Panel admitted the statement in evidence.

In relation to Appendix E, she said the representation from Mr Offin was in objection to the Police application, but Mr Offin had ticked the wrong box to indicate support. He was in fact in support Mr Hussain, the Licence Holder.

She further informed the Panel, the application was in relation to the prevention of crime and disorder and the protection of children from harm licensing objectives, as set out in the report.

There being no questions for the Senior Licensing Officer from any parties present, PC Kirsop addressed the Panel in support of the application.

She highlighted the background and gave details of the joint test purchase operation carried out by PC Darren Welch and Mr Ramesh Patel, Trading Standards at the premises on 28 May 2019. At 11.15 am on that day, two 14 years old test purchasers went to the shop and selected a bar of chocolate and single can of 'Perla', an imported Eastern European beer with an alcohol volume of 7.8%. They paid in cash for the items, with no questions asked and left.

She said PC Welch Mr Patel then entered the store and spoke to the boy behind the till about the test purchase. He gave his name and said he was over 18 years old. Mr Mazamal HUSSAIN then came to the front of the store and confirmed his son behind the till was in fact only 15 years old. He was informed about the failed test purchase.

She informed the Panel Beds Police were concerned Mr Hussain showed no concern for the breach of the licensing objectives, particularly the sale of strong alcohol to children.

She went on to say, when PC Welch went back to collect the CCTV footage the following week, Mr Hussain was uncooperative, as he was also when requested to show his refusal log. He claimed he did not know the process to download the CCTV footage or how to retrieve refusals from his till system.

She added that as Mr Hussain had shown no responsibility and no respect for the licensing objectives, particularly the prevention of harm to children, it was the recommendation of the Police that the premises licence be revoked.

PC Kirsop was questioned by the Panel and responded in compliance with the approved procedure, confirming the test purchasers and the seller were underage at 14 and 15 years of age respectively. She also confirmed there was a lack of co-operation from Mr Hussain when he was requested to supply the CCTV footage of the test purchase transaction and access to the premises refusal log.

PC Kirsop was questioned by Miss Fisher, Counsel for the Licence Holder's and responded in compliance with the approved procedure, providing information as set out below:

- PC Kirsop was not familiar with the EPOS till system used at the premises, on which refusals were recorded;
- She agreed keeping a refusal log and downloading CCTV footage were not in the conditions of the licence;
- To the suggestion Mr Hussain had been uncooperative and had the means to comply with any additional conditions in the future, she said Mr Hussain's attitude and behaviour was not forthcoming and fell below what was expected for a premises licence holder;
- She could not comment about the claim PC Welch had been standoffish, but agreed Mr Hussain had been forthcoming about the age of his son;

- She was not aware of other issues in the last 20 years during Mr Hussain tenure of the premises licence;
- She was aware of another licence premises at 33-35 High Town Road, close to St Matthew's Primary School that was also under review;
- To the suggestion there was no direct evidence to link Mr Hussain's shop with a breach of the prevention of crime and disorder licensing objective, she said she did not know;
- To a suggestion there was no reason for the review, she said it was possibly prompted by Mr Hussain's behaviour;
- In relation to the prevention of harm to children licensing objective, she was not aware of other test purchasers at Mr Hussain's shop.

Chloe Stephenson addressed the Panel on behalf of Public Health, a Responsible Authority, making representation as per the written submission at Appendix D of the report (Ref: 9). Key points made are set out below:

- Public Health was very concerned about the sale of very strong alcohol to a child considerably below the legal minimum age, the sale being made by an unsupervised 15 year old boy;
- Children were less able to cope with the effects of alcohol, which could affect normal development and lead to greater risky behaviour, including anti-social behaviour;
- Intoxication could also make children more vulnerable to predatory adults, evident from recent high profile child safeguarding cases, where alcohol was shown to be a significant contributory factor;
- The Perla beer bought, with an alcohol by volume of 7.6% was particularly worrying, as contained nearly 4 units of alcohol, the recommended daily amount for an adult;
- The Protection of children from harm licensing objective was seriously undermined;
- It was irresponsible for the child seller to have been left unsupervised, as a responsible adult would most likely have refused the sale;
- The premise is in a medium risk area, as assessed by the Public Health Alcohol Licencing Matrix Tool, designed to identify areas of high alcohol-related harm;
- Public Health believed the application for the review of the Premises Licence should be taken very seriously and supported it.

The Public Health Officer was questioned by the Panel and responded in compliance with the approved procedure, agreeing the public health issue with under age children consuming alcohol could apply to any premises

The Public Health Officer was questioned by Miss Fisher, Counsel for the Licence Holder's and responded in compliance with the approved procedure, providing information as set out below:

- Public health representation was about the effect of alcohol on children in relation to the review;
- Licensed premises should not be selling high strength alcohol. Public health had issued information to licence holders;
- She could not comment on whether there had been any previous incidents at the premises;

- She agreed one incident was one too many and agreed conditions could be added to the licence to stop recurrence in the future.

Bill Masini, addressed the Panel at length on behalf of Trading Standards, a Responsible Authority, making representation as per the written submission at Appendix D of the report (Ref: 9). Key points made are set out below:

- The test purchase by the 14 year old boy on which the review was based was carried out at school half-term;
- Mr Hussain's shop was the only one which made such a sale on the day;
- If the seller had been of legal age, he believed the sale would have been refused;
- There was a bell to call Mr Hussain when at the back of the shop away from the till;
- Sale by a minor to a minor were aggravating factors;
- Perla beer was 7.6% by volume, above the 7.5% limit, when higher duty applied;
- Trading Standards had already been dealing with Mr Hussain about sales of super strength beers fuelling anti-social behaviour around the town. The Premises were just outside the public protection order restricted area;
- My Hussain's illegal activities relating to acquisition and sale of super strength beers, including Karpackie beer at 9% by volume and of unregulated and counterfeit cigarettes and tobacco were described in detail;
- Mr Hussain was described as co-operative and eventually accepted simple cautions for 17 offences;
- The Designated Premises Supervisor was absent on every occasion the premises were visited;
- The review application by the Police was supported, due to the pattern of behaviour over a period of time and a number of offences committed by My Hussain around cheap illegal products;
- If the Panel was minded not to revoke the licence, a set of conditions to prevent future breached of the licensing objectives were proposed as set out in the written representation, as the three current conditions on the licence were inadequate.

Bill Masini was questioned by the Panel and responded in compliance with the approved procedure, providing information as set out below:

- The test purchase in question was the first one he was aware of, although he was not personally involved in it. He had dealt with Mr Hussain a long time previously;
- He agreed buying and selling cheap alcohol could be fuelling the illegal import of the alcohol, as if shop keepers did not sell it, it would not been brought in;
- Luton was well served by wholesalers, but some shop keepers wished to gain a competitive advantage by selling at low prices;
- There were big problems in Luton with sale of illegal tobacco products, as shop keepers were keen to grab a bargain;
- He was not aware of which other shops were subject of test purchases on the day, but only Mr Hussain's shop failed. It was difficult for a child to refuse sale to another child;

- In view of the pending review and Mr Hussain dealing with domestic issues, there was no prosecution in relation to illegal activities detected following the test purchase operation. Mr Hussain accepted cautions for a number of offences, which were then concluded.

The Clerk to the Panel reminded Members sale of tobacco products was not a licensable activity for the purpose of the premises licence.

The Trading Standard Officer was questioned by Miss Fisher, Counsel for the Licence Holder's and responded in compliance with the approved procedure, providing information as set out below:

- He was not aware of repetitive behaviour by Mr Hussain, as he had not been working at Luton for a long time, since his involvement with him in 2005;
- He was working in Luton to deal with problems and had not looked at repetitive behaviour. He was not aware Mr Hussain was not complying with the conditions on his licence;
- He agreed Mr Hussain had been co-operative, as he admitted the offences. He had no reason to believe Mr Hussain would not be the same in the future;
- He agreed the sale would not have taken place if an adult had been behind the till. It was difficult for a child to refuse another child;
- He was aware Mr Hussain had been under pressure and personal stress from his domestic circumstances around his wife's pregnancy and their baby's health at the time of the test purchase, which could have been a factor about the underage alcohol sale, but did not explain the illegal activities with the Karpackie beer and tobacco products;
- He agreed if the bell had been rung, Mr Hussain would have come out and the sale would not have been made;
- Proposed conditions were set out in his written representation, including removing the DPS, not selling super strength beers and not dealing in illegal sale of tobacco;
- Restricting beers strength at 5.5% by volume, as agreed by Public Health was designed to stop sale of super strength beers. Mr Hussain did not sell niche beers and only dealt in super strength beers;
- He was not aware if other shops were restricted to sales of beers of 7.4% and under by volume. He believed it was better to have the conditions than not to have a licence;
- He had seen people in the shop misbehaving on his visits and had not seen the DPS at all in the current year.

Miss Fisher then invited Mr Hussain to answer a number of questions, to give evidence in support of his defence against the application, which is summarised below:

- Normally, staff working in the premises comprised himself, his wife and 2 or 3 part-time employees. His sons also helps when not at school and at week-ends;
- He had been in business for about 20 years, during which there had been one incident in 2004/5 after he became sole trader, having split from a partnership before that;

- If anyone buying alcohol looked under 25, they would be asked for ID, or if his sons were behind the till, they would ring a bell to call him from the back of the store;
- He described his stressful home situation due to his wife's difficult pregnancy and the birth of their daughter, with health problems, necessitating stay in hospital, when he was working alone at the shop. His shop was his only source of income;
- On 28 May his wife was in hospital. It was school half-term. His son brought him some food for lunch and he went to the back of the store to warm and eat the food, leaving his son at the till;
- When he came back he saw PC Welch and Mr Patel
- He claimed PC Welch spoke to him in an aggressive manner and he responded in the same manner;
- He accepted his son had done wrong and accepted responsibility for it;
- He alleged PC Welch threatened to have his licence revoked instead of issuing him with an £85 fine;
- He said his son told Mr Patel he was over 18 when asked his age and that he had told his son to tell the truth. He claimed his son was trying to protect him and made a mistake;
- About the CCTV footage, he did not feel it was his responsibility to provide a USB stick and download it and invited PC Welch to help himself. PC Welch also asked him to put the footage on two screens, which he did not know how to do.
- About the refusal log, he informed PC Welch it was on his Epos till system, but did not know how to retrieve information from it, as he said he was not technically minded and only knew the basics;
- He said he answered every question PC Welch put to him and that it was just a question of PC Welch and him not getting on, due a personality clash and that he had no issues with the Police or any other agencies;
- In terms of the representation from St Matthew's Primary School, he said High Town Road was saturated with off-licences. He had never sold alcohol to young people and had no control over the prostitution and drug abuse issues in the area;
- He said Mr Offin supported him, but could not attend the hearing. Other customers had letters about the review and did not make comments against or for him;
- If he lost his licence, he said he would have to close the shop, as most of his business was around his licensing trade, as grocery sales was low;
- He said he had accepted a caution for matters dealt with by Trading Standards and asked the committee to do what they felt was appropriate. He added he would accept the conditions, but the one restricting sales to beers of no more than 5.5% would be a problem, and would wish to have it changed to 7.5%, the upper limit allowed. He added his business was only viable due to the variety of the products sold and him working 7 days a week.

Mr Hussain, the Premises Licence Holder was questioned by the Panel and responded in compliance with the approved procedure, providing information as set out below:

- He admitted his son lied about his age to cover himself and help his father;
- He did not agree his DPS was not around, as Trading Standards only visited three times, a point disputed by Bill Masini;
- He stated his shop was not the only one to fail a test purchase, as Colin Road also did;
- The till system EPOS could be by-passed to make a sale, but he said his son should have rung the bell, which he had done before. He would not have been left on his own if his wife had been in. He made a mistake and lied;
- He used to have under-age children try to buy alcohol, but once they knew they would be refused, they stopped going to the shop.

In summing up, PC Kirsop made the point the Police had no confidence they could establish a working relationship with Mr Hussain, the Licence Holder, and described him as unprofessional. She said the Police viewed the sale of alcohol to an under-aged child by an under-aged child, with no questions asked, very seriously and requested the Panel consider revocation of the licence.

Mr Masini said Trading Standards supported the Police application.

Miss Fisher, Counsel for Mr Hussain said revocation of his licence would be disproportionate in the circumstances, as it should be adequate to add conditions to the licence to promote the prevention of crime and disorder and prevention of harm to children licensing objectives.

She invited the Panel to consider and take into account the whole circumstances in mitigation, including the fact there had not been any incidents in 15 years, it was not clear if he had passed other test purchases and Mr Hussain's domestic circumstances about his wife and baby daughter's ill-health at the time. She added a fine would have been appropriate for the offences committed in the circumstances and the only evidence that Mr Hussain could not be responsible was from PC Welch. She said Mr Hussain had co-operated with Mr Masini.

In closing, Miss Fisher stated it would be disproportionate to revoke the licence, as Mr Hussain had a young family to support. She invited the Panel not to revoke the licence, but to add conditions, as suggested by Trading Standards, which Mr Hussain was willing to accept, except for the restriction on the strength of beers, which should be 7.5% and not 5.5%.

The Clerk reminded the Panel of its powers and the options available, as set out in the report. He informed the Panel their decision needed to be proportionate to promote the licensing objectives.

He also advised, in relation to the representation from St Matthew's Primary School, that although there were problems in the area, there were many other licensed premises and no direct evidence had been provided to specifically link these premises to the problems and therefore they should not be regarded as relevant representations unless it could be shown that there was a specific link to these premises.

Members considered whether the interest in retiring to make their decision without all the parties present outweighed the interest in holding their deliberations with them present, in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.



Following brief discussion by Members, the Panel determined that the public interest of retiring to make their decision in private outweighed the public interest in holding their deliberations in public.

**12. LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005 (REF: 7)**

**Resolved:** That in accordance with regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005, the public and press and all parties to the application, except the Clerk and Administrators be excluded from the meeting during consideration of the decision in relation to the report of the Principal Licensing Officer (Ref: 6) as referred to in Minute No. 11/19.

**13. LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005 (REF: 7)**

**Resolved:** That, following their deliberations, the public and press and all parties to the application be no longer excluded from the meeting.

**14. APPLICATION FOR REVIEW OF PREMISES LICENCE, 7 To 11, 135 HIGH TOWN ROAD, LUTON (REF: 6)**

**Resolved:** That, the Panel having carefully considered all the papers before it and the oral representations made by PC Leanne Kirsop for Bedfordshire Police, Bill Masini for Luton Council, Trading Standards and Chloe Stephenson for Luton Council, Public Health in support of your application and those made by Miss Fisher, Counsel on behalf of Mr Mazamal Hussain, the Premises Licence Holder, and in addition the Panel having regard to the licensing objectives set out in the Licensing Act 2003 ('the Act'), the Council's Statement of Licensing Policy and the Guidance issued under the Act, it considered that it would be disproportionate to revoke the licence.

However, the Panel considered it appropriate in order to promote the licensing objectives, to modify and add conditions to the licence as follows:

Modification

1. The Designated Premises Supervisor (Jemma Louise Barrow) be removed from the licence.
2. Remove Condition Annex 2(1) *"CCTV tapes to be kept for 14 days"*.

Additional Conditions

1. No beers or lagers in cans, bottles or any other container constructed of any material with an ABV of more than 7.5% are to be displayed, sold or offered for sale from or store on the premises
2. No ciders in cans or bottles or any other container constructed from any material with an ABV of more than 4.9% are to be displayed, sold or offered for sale from or stored on the premises
3. No beers, lagers or ciders are to be displayed, sold or offered for sale from or stored on the premises in individual containers that have a capacity exceeding 1 litre (or imperial equivalent)
4. A minimum of 4 cans of beer, lager or cider shall be sold in any one transaction. A combination of these drinks is permitted to achieve minimum quantity.

5. No spirits in any container (constructed of any material) where the quantity is 100ml or less, are to be displayed, sold or offered for sale from or stored on the premises.
6. Alcohol shall not be sold in an open container or be consumed in the licensed premises.
7. There shall be a personal licence holder on the premises at all times alcohol is available for supply, for the purpose of supervising such sales
8. That a challenge 25 scheme shall be maintained at the premises requiring that staff selling alcohol request that any customer who looks under 25 years old, and who is attempting to purchase alcohol, provided valid photographic identification proving that the customer is at least 18 years old. Valid photographic identification is composed of a driving licence, passport, UK armed services ID card and any Proof of Age Standards Scheme (PASS) accredited card such as the Proof of Age London (PAL) card.
9. That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons, and the challenge 25 scheme in operation at the premises. A record of such training shall be kept / be accessible at all times and be made immediately available for inspection at the premises to Council or Police Officers on request. The training record shall include the trainee's name (in block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received.
10. That clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating to the effect that a challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and stating what the acceptable forms of proof of age are. Such signage shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale. The signage shall be kept free from obstructions at all times.
11. That an electronic point of sale (EPOS) system be installed at all tills on the premises and it shall be configured to prompt the operator to check proof of age when an alcoholic product (any other product where the age for purchase is restricted by law) is scanned. The prompt should require the operator to confirm that the purchaser is over 18 (or any other age required by the relevant law for other products) before the next item can be scanned or the transaction completed. The EPOS system would need to have the ability to report from if/when required.
12. Clear and prominent notices shall be displayed informing people who enter the shop that CCTV is in operation and images are being recorded.
13. A CCTV system shall be installed at the premises that records clear images of to cover all areas within the premises including the outside to the front in all lighting conditions both the interior and exterior of the premises. It must be positioned to capture a clear facial image of every person who enters the premise and to also capture the sale of alcohol and tobacco products.
14. The CCTV system shall have a 31 day recording facility and be maintained in full working order at all times.

15. All CCTV footage shall be kept for a period of thirty on (31) days and shall, upon request, be made immediately available to The Police and/or Authorised Officers from Luton Borough Council.
16. All staff working at the premise shall be trained and be fully conversant in the correct operation of the CCTV and be able to demonstrate its operation and download images to a removable device on immediate request by the Police and/or Authorised Officers from Luton Borough Council.
17. That all staff are trained in their responsibilities under the Licensing Act 2003 and training records to be kept and updated every 6 months and shall, upon request, be made immediately available to Police Officers and Authorised Officer from Luton Borough Council

**(Note: The meeting ended at 1.18 pm)**