

Minutes of the Licensing Sub-Committee

26 November 2020

-: Present :-

Councillors Barnby, Ellery and Foster

1. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

2. Zakopane, 16 Market Street, Torquay

Members considered a report on an application for a Premises Licence in respect of Zakopane, 16 Market Street, Torquay. The Premises do fall within the Cumulative Impact Area.

Written Representations received from:

Name	Details	Date of Representation
Police	Written representation objecting to the application on the grounds of 'The Prevention of Crime and Disorder' and 'The Prevention of Public Nuisance'.	3 November 2020
		19 November 2020

Additional Information:

At the hearing the normal allowance of 10 minutes for oral representations was extended to 13 minutes.

Oral Representations received from:

Name	Details
Applicants Legal Representative	The Applicant's Legal Representative outlined the application and he and the Applicant responded to questions.
Police	The Police outlined their representation and responded to questions from Members.

Decision:

That the application for a Premises Licence in respect of Zakopane, 16 Market Street, Torquay be refused.

Reason for Decision:

Having carefully considered all the written and oral Representations, Members unanimously resolved to refuse the application, having been satisfied on the balance of probabilities and the evidence before them, that to refuse the application was both proportionate and appropriate, in this instance.

In coming to that decision, Members noted that the premises is situated within the Authority's Cumulative Impact Area, which experiences high levels of crime, disorder and public nuisance and has immediately surrounding it, a Public Space Protection Order area which prohibits the consumption of alcohol in public spaces in the town centre due to the link between alcohol consumption and crime and anti-social behaviour. With this in mind, Members had grave concerns regarding Mr Hassan's capabilities to operate a premises in such a restrictive area, in a manner which complied with all conditions of a premises licence and ensured the Licensing Objectives would be promoted.

Members concerns in this regard, arose of the evidence before them from Ms Michelle Bishop. Members noted that on the 18th November 2020 via email, Ms Bishop advised the Police Licensing Officer, Ms Julie Smart that during 2014 both the Police and Fenland District Council Licensing experienced concerns with Mr Hassan re failure to comply with conditions of an action plan set in conjunction with the Responsible Authority Officer Group but did, after additional support was given to him from Officers.

When asked what conditions he was failing to comply with in respect of this evidence, Mr Hassan was unable to answer this question with any clarity and appeared confused in what was being asked of him. That was, until his legal representative sought instructions from Mr Hassan over the telephone whilst both their microphones to the virtual hearing, were muted. On the unmuting, it was put forward that the concerns were around a refusal book which had run out of pages and a new one was required. This was then echoed by Mr Hassan himself, with clarity. Members could not be satisfied that this was an accurate account of those concerns because the evidence of Ms Bishop mentioned conditions in the plural and that it was after additional support, Mr Hassan complied. In Members opinion, the replacement of a refusal book may have been part of the concerns but they found Mr Hassan not to be forthcoming with the whole account of these concerns and this caused them to question Mr Hassan's capabilities to operate a premises in what could be a restrictive and challenging environment. Members also noted the Police's oral evidence in this regard that an action plan is usually put in place, where there are multiple concerns.

It was also of concern to Members that Mr Hassan's legal representative put forward that Mr Hassan was not aware of the Police and Licensing Authorities concerns in relation to compliance with conditions. Members resolved that by the very fact an action plan was in place and Mr Hassan was provided with support by Officers, Mr Hassan would have been fully aware of those concerns.

It was noted by Members that the transfer of the premises before them, was arranged through a friend and that within Mr Hassan's wider community, this was usual practice; and it was put forward by Mr Hassan's legal representative, that there were documents showing the transfer of shares. However this did not provide assurance to Members that Mr Hassan was not connected in some manner, to those who had carried out illegal activity at licensed premises. Noting also the Polices' submission, that this is a tactic used by organised crime groups who nominate a new Premises Licence Holder and Designated Premises Supervisor to obtain the licence and act as a front for their activities.

Members suspicions were raised in this regard, given Mr Hassan's oral submission that it was his girlfriend's idea to leave the premises in Wisbech, as there was too much competition in the area, but that he has now purchased an off licence in Market Street, Torquay, where there are two other European food shops selling similar products to those sold in Zakopane.

This coupled with the seizure of tobacco in Birmingham, which Mr Hassan's legal representative said Mr Hassan had no involvement in or knowledge of, despite being present and legally responsible for the premises at that time. It was also of concern to Members to learn that this premises also had a concealment, which is also similar to what occurred in Zakopane, in Torquay under previous ownership and led to that premises licence being revoked; and a significant quantity of goods being seized by Trading Standards.

Furthermore, Members noted with concern that on the 23rd March 2020, after Mr Hassan had sold Wisbech Mini Market, using the same friend arrangement to do so, he attended the premises to visit a friend and that it was put forward by Mr Hassan's legal representative that the fact Mr Hassan arrived at the Wisbech premises whilst a tobacco search was being carried out, is merely a coincidence and that it was in fact to be helpful that Mr Hassan asked if he could go behind the counter and serve customers and did so.

However, Members found this submission to contradict the evidence of Ms Bishop, as she thought Mr Hassan serving customers was unusual and that she intended to go back to the premises to speak to the Designated Premises Supervisor regarding this but hasn't been able to do so due to covid19.

Members gave careful consideration to the letter from the Border Force, dated 9 August 2018 which was submitted as part of the Police representation and the oral representations of Mr Hassan's legal representative, in this regard.

It was noted by Members that on the 2nd June 2018 whilst owning Wisbech which he was licensed to sell alcohol, Mr Hassan was stopped by an Officer of the Border Force, where it was disclosed he had imported a quantity of alcohol but was unsure how much had been purchased but that it was to be shared between him and a friend. The amount estimated to be spent by Mr Hassan, was less than the actual amount shown on receipts. It was said by Mr Hassan to the Border Force officer, that the alcohol was for gifts and a birthday party being held by him but at the time, Mr Hassan was unable to give a date when or where, that party would be held and how many people would attend. However during the hearing,

Mr Hassan's legal representative put forward that the alcohol was for Mr Hassan, his wife and a friend's birthday and gave Members the birth dates of Mr Hassan and his wife. Members could not understand why Mr Hassan did not supply this information to the Border Force at the time and in their opinion, questioned the honesty of his instruction now.

It was also of concern to learn from the Border Forces letter that the main reasons for them not concluding that the goods were for personal use, was the manner in which the goods were loaded in on commercial pallets, that Mr Hassan was vague about how the goods were to be split and that the claimed expenditure did not tally with the overall bill, that there were mixed brands of beer and wines, with no loyalty to a particular brand and that as he was engaged in the illicit trade of excise goods Border Force take a serious view to the improper importation of such goods and the vehicle itself, was seized at that time.

Whilst Members acknowledged Mr Hassan's legal representatives oral submission that costs to appeal such a decision may be prohibitive, it was a concern to Members that, as a personal licence and an operator of licenced premises, Mr Hassan would not think it cost effective, both financial and reputational to challenge this decision, in an attempt to maintain a reputation as a responsible licensee.

Notwithstanding the concerns already set out above, it was a concern to Members to learn from the Police's oral submission that three different Authorities across the Country, who have knowledge of Mr Hassan, have all indicated that Mr Hassan is linked to smuggled goods and for that reason too, Members determined to refuse this application was proportionate and appropriate, to ensure that the Licensing Objectives were upheld.

In concluding, Members gave careful consideration to what other options were available to them, as an alternative to refusal but unanimously resolved, that an outright refusal was the only appropriate option, in this instance.

Chairman/woman