

Decision of the Licensing Sub-Committee
30 October 2014

West 9 Food and Wine, 175 Ladbroke Grove, W10 6HJ ("the Premises")

The Committee has considered an application for the review of a premises licence under the Licensing Act 2003 ("the Act").

The Committee has considered the committee papers and the submissions made by all of the parties, both orally and in writing.

In reaching its decision the Committee has had regard to the relevant legislation, the Secretary of State's Guidance ("Guidance") and the Authority's Statement of Licensing Policy ("SLP").

In summary, the Committee has decided, after taking into account all of the individual circumstances of this case that it is necessary for the promotion of the four licensing objectives to revoke the premises licence.

Procedural Matters

1. The application to review the Premises Licence ("the licence") was submitted by PC Ian Davis for the Metropolitan Police on 9 September 2014. He was present at the hearing and was represented by Counsel Mr Ranatunga. Supporting the review was Mr Douglas Dickson, Senior Trading Standards Officer.
2. The Premises Licence Holders ("PLHs") are Mr Nallanathan Anandankumariah and Mr Sivarasa Thamilvanan. The Designated Premises Supervisor ("DPS") is Mr Nallanathan Anandankumariah. At the hearing Mr Anandankumariah was represented by Mr Dadds of Dadds LLP and Mr Aylott also of Dadds LLP represented Mr Thamilvanan.
3. As well as the application to review the licence there were two additional applications for determination by the Committee: (1) application to transfer a Premises Licence to Mr Pusparasalengam Chenthooran and (2) to vary the Designated Premises Supervisor to Mr Pusparasalengam Chenthooran. These applications were submitted on 23 September 2014. Mr Chenthooran was present at the hearing and confirmed at the start that he was withdrawing both the applications and thereafter left.
4. The evidence before the Committee comprised of the Notice of Hearing (dispatched 15 October 2014), Supplementary Papers submitted on behalf of the PLHs (which is not for publication due to containing personal data), bundle of Additional Papers (circulated on 27 October 2014), Witness Statement of Alan Aylott dated 29 October 2014, list of 27 proposed conditions submitted by Mr Aylott at the hearing (attached to this decision as Appendix 1), and CRIS reports for the: 5 August 2014, 28 March 2014, 1 March 2014, 25 November 2013 and 7 October 2014.

Preliminary Issue

5. Mr Dadds asked for members of the public to be excluded from the hearing as permitted under Regulation 14 of the Licensing Act (Hearings) Regulations 2005 because he was mindful that the issues raised in this review may be subject to proceedings in another forum or are *sub judice*. He submitted that should there be other proceedings he did

not want to prejudice them and on this basis suggested that only the parties to the review should remain, together with their legal advisors. PC Davis and Mr Dickson confirmed that as far as they are aware their respective Authorities were not presently taking any further action by way of prosecution proceedings. However, Mr Dickson advised that he could not rule out Her Majesty's Revenue and Customs ("HMRC") taking any legal action in view of the matters which emerged from the inspections (which will be referred to further below). The Committee took note that the Notice of Hearing and the Additional Papers had been published and placed in the public domain prior to the hearing and before Mr Dadds made the request to exclude members of the public from the hearing.

Decision on Preliminary Issue

The Committee, having due regard to the facts of the case, determined that the hearing should exclude the public so that if there are other proceedings they would not be prejudiced by the matters arising from the hearing. Insofar as this reasoned decision is concerned, it will be published 21 days after it has been served on all the parties unless the PLHs make submissions before the expiry of 21 days as to why they consider it should not be placed in the public domain. Should submissions be made, a considered decision will be taken by the Council on the availability of this document to the public.

Reasons

6. In making its decision the Committee has taken into account all relevant sections of its SLP and the Guidance. The Committee considers the following paragraphs of the Guidance and its SLP are particularly important but it should be emphasised this is not an exhaustive list as the Committee has considered all relevant provisions of both documents. Relevant paragraphs are: - 1.9, 1.11, 1.12, 1.16, 1.17, 1.19, 2.1 – 2.34, 9.12, 9.14 – 9.16, 9.22 – 9.26, 9.33 – 9.36, 10.10 – 10.13, 11.5 – 11.11, 11.24 – 11.28, 12.10, 13.10, 13.12 and 13.13 of the Guidance and paragraphs 2.1, 2.4, 2.7, 3.8, 6.1 – 6.3, 8.1, 8.2, 8.4, 12.4 – 12.8 of the SLP.
7. The Committee recognises that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. Representations must relate to the particular premises in question and must be relevant to the promotion of the licensing objectives. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. **The remedial action taken should generally be directed at these causes and should always be no more than a necessary, appropriate and proportionate response.**
8. The application for review is made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives. The Committee took note of the two pertinent matters directly linked to the premises: the fact that they have persistently sold alcohol to street drinkers and obtained and stocked for onward sale non-duty paid alcohol. The respective matters are addressed separately below.

9. The Police provided a significant amount of evidence which supported the contention that the premises have been responsible for selling alcohol to the street drinkers which congregate in the local area. The Committee, while being familiar with the locality, took note of the Witness Statement of Police Community Support Officer ("PCSO") Irene Scott, located at pages 41 – 43 of the Notice of Hearing. Her statement provides very useful background information in relation to the street drinkers which tend to frequent Malton Mews, Portobello Green and Tavistock Piazza areas. The pertinent points which emerge from PCSO Scott's statement are that:

- Over the last few years approximately 10 – 15 individuals loiter in and around the area throughout the day.
- This is an area which is frequented by commuters, shoppers and local residents. The street drinkers tend to aggressively beg them for money and follow members of the public down the road while doing so. They also sit by main doors and ATMs of Sainsbury's to beg. If members of the public ignore them or do not give them money, they are verbally abused and often intimidated.
- They are known to urinate, defecate and vomit in the area, which creates a horrendous smell which in itself is of grave concern. Drug paraphernalia is often left lying around and the street drinkers have been witnessed to have sex in the public areas. Requests for them to move by shop owners have lead to altercations.
- These individuals have little respect for shop staff or the Police, swearing or intimidating local community officers.

10. It was PC Davis's considered opinion that the premises have continually sold high strength beers and ciders to these local street drinkers. To corroborate this he submitted a number of extracts of complaints from the public, PCSOs and police officers that came from the Police's Integrated Intelligence Platform. While the Committee took note of all of these extracts, it found the following ones particularly relevant in determining this matter as they link the sale of alcohol from the premises to the street drinkers:

- **26.02.14 at 10:45:** PCSOs observe three of the street drinkers loitering in the area, one begging in front of Sainsbury's. One of the street drinkers enters the premises, at which point the officers go to West 9 and wait outside for him to exit. When he does he has a carrier bag containing alcohol, namely one can of Stella and two cans of Skol. When the staff member in the premises was questioned as to why he sold the alcohol to one of the known street drinkers his response was that "you lot need to ban them" and justified the sale by stating that they did not want any trouble in the shop.
- **02.04.14:** two PCSO officers dealt with a complaint from the "shop keeper" of West 9 which involved two men that attended the premises the previous day, one was intoxicated and purchased two bottles of White Ace Cider and wine and the other took a bottle of wine without paying for it. The Committee took note of the fact that the male was served alcohol while intoxicated, which the staff member admitted, and this concerned the Committee gravely as it is aware that this goes against the ethos of the Act. Interestingly the staff member also admitted to selling alcohol to some of the street drinkers. The Committee was also mindful that the officers warned both the "shop keeper and staff" about selling alcohol to people who are intoxicated and to street drinkers and questioned whether the shopkeeper is in fact one of the PLHs.
- **03.04.14:** a joint visit of a number of premises in the area was carried out by the Police (PC Davis was present) and the Council's Licensing Enforcement

Officers. West 9 were called on and the staff were given advice about the sale of alcohol to street drinkers, how to be more robust in refusing sales to them, the popular drinks favoured by street drinkers were identified and they were advised to withdraw them from the stock.

- **19.06.14 at 14:16:** PCSOs approached three known street drinkers who were drinking alcohol from cans: Super Skol and K Cider. The drinkers advised that they purchased the drinks from "the newsagent near Red Planet Pizza shop on Ladbroke Grove". The officers were mindful that there are two newsagents next to the pizza shop and deduced that it was West 9 which actually sold the cans as it sells these particular alcoholic brands, whereas the other newsagent does not. According to the drinkers, they have a tab running at the premises and they are able to pay for their goods at a later time.
- **30.06.14 at 13:16:** the Committee took note of the fact that the drinkers have approached members of the public to purchase alcohol on their behalf. It was PC Davis's contention that the onus is on the licensed premises to be vigilant and through this vigilance to ensure that there are good management practices to prevent alcohol being purchased for children or street drinkers.
- **23.07.14 at approximately 15:00:** an officer witnessed two street drinkers in the delivery bay of Sainsbury's. One of the drinkers had a can of alcohol in his hand and there were several other cans of Super Skol next to them. One of the individuals told the officer that West 9 should be told "not to sell [the street drinkers] the drinks". This struck the Committee that the individuals were almost pleading to get West 9 to stop selling the alcohol and yet it is noteworthy that on the visits of 26.02.14, 02.04.14 and 03.04.14 the staff members were spoken to about this issue. During the hearing the PLHs confirmed that they only employ two other staff members so the Committee has deduced that the staff have been advised on a number of occasions not to sell alcohol to the street drinkers.

11. On the 13 August 2014 PC Davis spoke with Mr Thamilvanan about the alcohol sales at the premises to street drinkers and explored intervention strategies to promote the licensing objectives. This was followed up by an email on the same day by PC Davis which Mr Thamilvanan responded¹ to the following day stating: "we do not sell alcoholic products to them and in some cases ban them from using our store." The Police submitted that his response was indicative of the poor management of the premises, instead of presenting proactive measures to address this issue or ask for advice there is a blanket denial of their involvement. The Committee was also surprised by Mr Thamilvanan's response, particularly as PCSOs had witnessed on a number of occasions street drinkers purchasing alcohol from the premises (as detailed in paragraph 10).

12. Interestingly, after the review application was submitted and after Mr Thamilvanan's email, a multi agency inspection took place on 19 September which involved the Police, HMRC and Trading Standards officers. It was noted that the premises continued to stock large quantities of single cans of beers and ciders with high ABV levels of 7.5 to 9.0%. This particular visit is also very important for the second issue of this review relating to the sale of non-duty paid alcohol and therefore further reference to it will be made later in this decision. However, the Committee was mindful of the fact that despite the advice previously given by various officers the premises had still not taken proactive measures to remove single cans of beer and cider from their stock, particularly those with a high ABV percentage and those favoured by street drinkers. This was another indication to the Committee that there were shortcomings in the

¹ Both emails are included at page 44 of the Notice of Hearing.

management of the premises and their apparent preference for commercial gain over the promotion of the licensing objectives.

13. The Committee was mindful of the email from Debra Silvester of the Licensing Services Agency which was sent on 25 September and included in the Notice of Hearing at pages 76 – 77. Ms Silvester had originally been instructed by the PLHs in respect of this review. Within this communication various submissions and assurances are provided, but most notably:

“With regard to condition 2² Mr Chenthooran is willing to stop selling all the beers and ciders favoured by street drinkers, i.e. Tennants Super, Kestrel Super, Skol Super and Special Brew. He will also stop selling White Ace and K ciders. Mr Anandankumariah and Mr Thamilvanan have also agreed to stop selling all of these drinks by 1st October, so any of these not already sold out by then will be removed from the premises on that date at Mr Chenthooran’s request.”

However, on 7 October at 15:50 PCSO Irene Scott and PC Fatmi were on foot patrol and while opposite West 9 they saw one of the known street drinkers walk into the premises. Shortly after they crossed over to the other side of the road upon which the individual exited with a black carrier bag that contained two cans (Strongbow Cider and Skol). The street drinker confirmed that he had purchased them from the premises. When the officers entered the shop the staff member behind the till flatly denied selling the alcohol. Another male in the shop (Thisan Siva) also denied selling alcohol to the street drinkers and maintained that it was the officers’ job to stop them from coming into the premises. During the hearing it was submitted for the PLHs that Strongbow was not on the list of drinks to be removed. What the Committee found particularly noteworthy about this incident is that despite the advice given to staff about this issue from previous visits, despite the initiation of the review proceedings and despite the assurance given on 25 September, single cans of beers and ciders and those cans which are favoured by street drinkers were still being sold at the premises and the fact remained that street drinkers were still being sold alcoholic drinks.

14. In determining this matter the Committee was mindful of its duty to ensure that there is a causal link between the matters pertaining to this review, particularly the sale of alcohol to street drinkers, and the premises³. Furthermore, the licensing authority has a duty to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder⁴. The Committee was satisfied, based on the evidence noted within this decision, that the premises had sold alcohol to street drinkers. The ramifications of this are well documented in PCSO Scott’s statement and the Committee considered that the sale of alcohol to the street drinkers exacerbates the problems in the area. The Police submitted that the persistent sale of alcohol by West 9 to street drinkers fails to promote the licensing objectives as these individuals are particularly vulnerable and the access to high strength cheap alcohol is compounding this issue. The street drinkers congregate in public spaces throughout the day and this has had an impact on the local community.

² Pages 2 - 4 of the Notice of Hearing list the Police’s proposed conditions. Condition 2 states: “No super strength beer or cider more than 6.0% ABV will be stocked.”

³ Paragraph 11.7 of the Guidance

⁴ Paragraph 11.26 of the Guidance

15. The second issue that prompted the review relates to the premises' alleged failure to pay duty to HMRC by stocking and selling a large quantity of non-duty paid spirits and wine. Two inspections were carried out at the premises by Trading Standards and HMRC officers which are of particular relevance and the pertinent details are as follows:

- **20 May 2014:** Officers seized 666 litres of wine and 566 litres of spirits. Further stock was identified but was left by the HMRC officers due to logistical reasons. The spirits were all described as "diverted" stock, which means that the products had probably been manufactured in the UK for export but subsequently diverted either in the UK or beyond. The back labels tend to be replaced to give it the appearance that it is UK duty paid stock. HMRC have estimated that the loss of duty on the goods seized amounts to £11,830.24.
- **18 September 2014:** more non-duty paid alcohol was discovered at the site and the total seized amounted to 85.76 litres. Mr Dickson also highlighted to the Committee that during this inspection more evidence was discovered indicating that the business is more heavily involved in duty evasion as counterfeit back labels were found for Bells, Famous Grouse Whiskey and Glens Vodka. The Committee took note of the photographs included within the Notice of Hearing of these labels (located at pages 57 and 58). Mr Dickson is satisfied that these labels are counterfeit as they do not have the required cut marks on them designed to prevent their removal in one piece. Samples of bottles spirits were also found in the basement with counterfeit labelling or bottles awaiting preparation (as their back labels were missing / removed).

In addition, the Wray and Nephew rum was found to be non-duty paid as it had been imported directly from Jamaica with the manufacturer's details on it. One of the boxes in the basement of this rum had a label on it stating that it had been air freighted via Gatwick airport. Mr Dickson confirmed that all legitimate products intended for sale in the UK market should have a UK name and address on it. Furthermore, some of the bottles were not of a size permitted in the European Union as they were 37.5cl as opposed to 35cl (which is a contravention under the Weights and Measures Act 1985).

During this visit Mr Dickson took note of the fact that no prices were on display for any of the goods in the premises, particularly the alcoholic beverages. One of the staff members, Mrs M Navarajasingham, advised that the prices had been removed for Notting Hill Carnival and had not been replaced yet. It was submitted that during Carnival the normal stock is removed from the shop floor to make way for additional alcohol. It was apparent to Mr Dickson that the goods had been returned haphazardly with little thought as rat poison and oven cleaner were stocked next to and above baby food, which in his professional opinion constitute breaches of the Price Marking Order 2004 and the Poisons Act 1974

16. It is noteworthy that on 20 May Mr Thamilvanan was present throughout the inspection which is confirmed in the statement of Lawrence Stapleton (dated 20 October 2014). During the inspection of 18 September the HMRC officer Mr Ken Nwabuzor spoke with "Mr Tham" (possibly Mr Sivarasa Thamilvanan) on the telephone and this is corroborated in his statement of 20 October. The Committee was mindful that the possession of non-duty paid alcohol constitutes a breach of Section 144 of the Act and the revelations from these two inspections were once again indicative of behaviour by the premises which goes against the ethos of the Act. The Committee, in determining this matter, has not made any findings on the criminality of the issues raised in this review; rather it has assessed the impact these matters have had on the promotion of the licensing objectives. A considerable amount of evidence was submitted by Mr Dickson and PC Davis in this regard, which the PLHs did not discredit. In fact, Mr

Thamilvanan took responsibility for the matter and both PLHs accepted the seriousness of the issue.

17. It was submitted that the PLHs commenced their business partnership over seven years ago. Mr Anandankumariah has not purportedly taken an active role in the day-to-day running of the premises and less so after he had a heart attack in 2008. The Committee took note of the email of Debra Silvester sent on 25 September which states that due to Mr Anandankumariah's poor health he has "been unable to work in the shop" and the correspondence from his Consultant Cardiologist which sets out his medical condition. It was submitted that due to Mr Anandankumariah's ill health Mr Thamilvanan took over the running of the shop until he too fell ill in November 2013 with a hernia problem culminating with an operation in March 2014.
18. The Committee took note of the email communication from Ms Silvester referred to previously which states that when Mr Thamilvanan fell ill, Mr Senkeethanan took over the running of the shop which is when the problems started occurring. The email also states that when the PLHs received the review papers and "found out what had been going on in the shop in their absence Mr Senkeethanan was dismissed and no longer works in the shop. It was while he was running the shop that the non duty paid alcohol was purchased by him without the knowledge of the licence holders. . . all of the alcohol found by [HMRC] was purchased by him". Yet in the statement of Lawrence Stapleton and during the hearing Mr Thamilvanan fully accepted that he had acquired the non-duty paid alcohol from a "man in a van", a matter he reaffirmed several times during the course of the proceedings. Mr Thamilvanan explained to the Committee that:
- He has been doing the general purchasing of stock for the shop and is responsible for the banking.
 - He has two staff members who he has trained about selling alcohol to children and street drinkers and advised them not to sell to either. He is fully aware of the problem with street drinkers in the area and maintains that staff at West 9 do not sell alcohol to them.
 - Mr Thamilvanan is a personal licence holder.
 - The "man in the van" comes round on an ad hoc basis. He does not leave any contact details nor does Mr Thamilvanan know his name. When he attends Mr Thamilvanan pays him in cash from money out of the till. Mr Thamilvanan tells Mr Anandankumariah about the purchases and he has purchased alcohol from the "man in the van" about 4 or 5 times. Mr Thamilvanan sought to justify the purchases on the basis that he needs to be able to compete with other shops.
19. The Committee was rather surprised at the shift between the submissions included in the email of 25 September and the revelation by Mr Thamilvanan that he had in fact acquired the non-duty paid alcohol. It left the Committee seriously questioning why two different submissions were put forward, the inconsistency of the submissions and ultimately PLHs ability to promote the licensing objectives and adhere to the provisions of the legislation.
20. During the course of the proceedings Mr Aylott explained that the partnership between the PLHs will be dissolved imminently. He submitted that if the Committee was minded not to revoke the premises licence he would suggest that Mr Thamilvanan is excluded from the premises and his name removed from the premises licence. Mr Aylott circulated a list of 27 conditions which he considered would address the problems and

promote the licensing objectives⁵. In turn, Mr Dadds also asked the Committee to adopt these conditions and asked the Committee to have due regard to the fact that his client was purportedly oblivious to the purchases of non-duty paid alcohol. On behalf of his client, Mr Dadds made the following submissions to the Committee:

- That he doubted the credibility of Mr Thamilselvan, particularly the admissions in relation to the purchase of non-duty paid alcohol as he considered that more than 4-5 purchases from the man in the van had taken place.
- There is a *bona fide* business partnership between the two PLHs, it is not clear when the partnership will be dissolved, but it will be ending.
- His client fully accepts that the sale of smuggled alcohol constitutes a particularly serious offence and that the Guidance recommends in such instances it is expected that revocation of the licence should be seriously considered (Guidance paragraphs 11.27 and 11.28).

21. However, Mr Dadds submitted that the Guidance, at paragraph 11.10, recommends that where the responsible authorities or authorised persons have concerns about problems identified at the premises, then adequate warning of those concerns needs to be given to enable the premises to improve where possible. It was his considered opinion that adequate warnings had not formally been given to the PLHs and that the Police had not carried out a thorough investigation before instigating this review. He suggested that letters should have been sent to the DPS and the PLHs explicitly setting out their concerns. The Committee was mindful of paragraph 11.10; the fact that it provides that it would be "good practice" to give early warning of concerns together with the steps they could take to address the concerns and *if* they fail to respond to the warnings then it is expected to lead to a decision to apply for a review. The Committee considered that the paragraph in question provided advice on good practice and thus not a necessary precursor to a review. In this instance, it was the Committee's considered opinion that the PLHs, particularly Mr Thamilselvan, had sufficient knowledge of the issues at the heart of this review and that advice had been given on several occasions by PCSOs and PC Davis not to sell alcohol to street drinkers. This is evidenced by the extracts noted in paragraph 10 above, the visit by PC Davis to the premises on 3 April 2014 and the email exchange of 13 and 14 August. The Committee considered that the absence of letters from the Police did not demonstrate that adequate notice had not been given and that in the circumstances the advice, visits and discussions over several months sufficed. Mr Thamilselvan had in the hearing accepted that street drinkers were an issue in the area and that he had trained his staff not to sell them alcohol. However, the suggestion was made at the hearing by those representing the PLHs that as the advice had been given to the staff it did not satisfy the graduated approach recommended in paragraph 11.10 of formally notifying the PLHs. It was the Committee's considered opinion that Mr Thamilselvan was aware of the issue. However, *even* if one was to assume that only the two staff had been spoken to, to maintain that the PLHs were themselves unaware or not informed by the relevant authorities would be another indicator of the poor management practices and the apparent lack of communication between the staff and the PLHs.

22. Nevertheless, and regardless of the Committee's finding that the PLHs had been given adequate warning, it was the Committee's considered opinion that 11.10 must be read in context with paragraphs 11.27 and 11.28. In addition, the Committee was mindful that each matter must be considered on its own merits. The Guidance directs licensing authorities that certain criminal activity in connection with licensed premises "should be

⁵ The list of conditions is attached to this Decision as Appendix 1

treated particularly seriously” and the sale of smuggled alcohol is included within the list⁶. In those circumstances the Guidance recommends that if the licensing authority determines that the crime prevention objective is being undermined “it is expected that revocation of the licence – even in the first instance – should be seriously considered.”⁷ In the circumstances the Committee was aware that the two inspections revealed large quantities of non-duty paid alcohol and while the inspection in September had revealed less non-duty paid alcohol than the first, the discovery of counterfeit labels and bottles awaiting preparation was of grave concern to the Committee. This in itself demonstrated that the PLHs and the staff were probably more involved and aware of the non-duty paid alcohol than they admitted. Mr Tamilvanan is a personal licence holder, one of the PLHs and had been present in the premises during the May inspection. By virtue of these facts he should have been fully aware of the duty to sell alcohol responsibly and in accordance with the legislation. To suggest to the Committee that the PLHs did not have adequate warning or advice in light of the serious facts of this case would be inappropriate as the gravity of the situation warranted necessary action by the responsible authorities and in turn by the Committee.

23. It was submitted that Mr Anandankumariah had been completely unaware of the purchases made by Mr Tamilvanan and suggested that there was no evidence of his involvement. It was his contention that Mr Anandankumariah recognises the seriousness of the matter and is desperate to salvage the business. As his health is better he will solely manage the shop and is proposing that the premises licence is suspended for a minimum period of 6 weeks to allow him to put in place the following measures:

- Retrain all staff;
- Seek a new DPS and manager;
- Completely dissolve the partnership with Mr Tamilvanan;
- Ensure all the conditions suggested in the Police’s application are implemented.

Mr Anandankumariah also sought to have the 27 conditions suggested by Mr Aylott imposed on the licence which he considered would promote the licensing objectives.

24. Upon questioning from the Committee, Mr Anandankumariah explained that he had four other partnerships of West 9 Food and Wine, which are located in West Hampstead, Ickenham, Harrow Road and Wembley. He advised the Committee that when he recently applied to extend the permitted hours for the sale by retail of alcohol for the premises in Wembley the licensing officers happened to witness staff selling alcohol to someone who was drunk. Nevertheless, the extended licence was granted subject to additional conditions imposed on the licence relating to the training of staff.

25. The Committee took note of the fact that in Debra Silvester’s email of 25 September she had stated that “neither of [the PLHs are] able to work at the premises any longer due to ill health” yet at the hearing it was submitted by Mr Dadds on behalf of Mr Anandankumariah that his client was now well enough to solely manage the running of the premises. It concerned the Committee that there was such a disparity on this fundamental issue of Mr Anandankumariah’s health. The inconsistency left the Committee questioning the credibility of Mr Anandankumariah.

⁶ Paragraph 11.27 of the Guidance

⁷ Paragraph 11.28 of the Guidance

26. It concerned the Committee that even after the review proceedings were instigated the premises had continued to sell alcohol to street drinkers and kept non-duty paid alcohol on site. At one point during the hearing it was mooted on behalf of the PLHs that on 18 September the HMRC officers had discovered alcohol which had been left by the HMRC officers during the May inspection. The Committee was not convinced by this argument. The Committee also considered that a responsible operator would have undertaken a very thorough stock check after May to ensure that all the stock left on site is legitimate, but it seems that this was not the case here. As for the sales to the street drinkers, it appeared to the Committee that even after several warnings and advice to the staff and Mr Thamilvanan, sales were still taking place.
27. Having considered all the above facts it was the Committee's considered opinion that the premises, in choosing to purchase and sell non-duty paid alcohol, had failed to promote the licensing objective of prevention of crime and the Committee was mindful of the seriousness of this as well as the advice within the Guidance that revocation must seriously be considered in the circumstances. The PLHs, particularly Mr Anandankumariah, believed that conditions and a temporary suspension of the licence would be the appropriate remedy. The Police and Trading Standards considered that revocation of the premises licence is appropriate and necessary. The Committee had grave concerns about the proposition put forward by the PLHs for a number of reasons, but primarily because it had serious reservations about the ability of Mr Anandankumariah to adhere to the conditions and to responsibly manage the premises with a view to complying with the Act and promoting the licensing objectives. The evidence before the Committee had confirmed that there had been a disregard of regulatory measures, such as: the purchasing, stocking and selling of non-duty paid alcohol; selling alcohol to someone who is drunk; stocking products in contravention of the Price Marking Order 2004 and the Poisons Act 1974; and stocking the wrong size bottles in contravention of the Weights and Measures Act 1985. Mr Anandankumariah had sought to lay the blame on Mr Thamilvanan, maintaining that he had placed his trust in his business partner to run the premises and that he had no knowledge of what was going on. However, the Committee was mindful of the fact that not only is Mr Anandankumariah a PLH, but he is also the DPS and as such has specific responsibilities under the Act which he has neglected. In fact, the Guidance reinforces that the DPS is the key person who is responsible for the day-to-day running of the premises⁸. The revelation that Mr Anandankumariah is a partner in another four premises around Greater London and the incident in the Wembley shop highlighted to the Committee that Mr Anandankumariah was probably aware of the business matters relating to the various premises and in any event, as a PLH and the DPS he should have been aware of what was happening in this premises. With this in mind, the Committee was particularly mindful of the submission made during the hearing that Mr Anandankumariah was desperate to salvage the business and in light of the various factors raised in these proceedings questioned the veracity of the assertions he made that he was not responsible for the purchasing, stocking and selling of the non-duty paid alcohol and that fact that he was purportedly oblivious to what was going on. The Committee specifically asked how the goods had been paid for and was told in cash from the till and the Committee doubted that Mr Anandankumariah did not know or had not himself questioned this arrangement. Therefore, Mr Anandankumariah's proposal to take responsibility for the future running of the business did not instil the Committee with much confidence. It appeared to the Committee that the premises had been poorly run and was not satisfied that Mr Anandankumariah would run it responsibly in the future.

⁸ Paragraph 2.6 of the Guidance

28. While the Committee considered that the conditions proposed by the PLHs are abundant and quite thorough, it questioned whether or not the PLHs and DPS could genuinely implement and adhere to them all. The facts of this case have revealed that the PLHs have not given due regard to the terms of the Act or Guidance and that they have failed to promote the licensing objectives. More importantly, the Committee had not been presented with specific evidence by the PLHs which proved a genuine intention to implement the conditions, for example staff training material, example training records, proposed measures to deter and deal with street drinkers, proposed stock control systems, etc. none of these were made available. The Committee was not satisfied that there was a genuine intention by the PLHs to remedy the problems.
29. The Committee considered that there have been persistent and ongoing management failures and an inability by the PLHs to grapple with the issues at the very heart of this review. As such, the Committee deemed that in the circumstances the suspension of the licence and/or the conditions would not be robust enough to address the issues of concern. There was a further proposal by Mr Anandankumariah that the DPS would be changed, yet a suitable alternative was not suggested and thus this did not present as a viable or appropriate option for the Committee to pursue. However, the Committee was entirely mindful of the fact that even if a name was put forward the Police may have an objection, as was the case in relation to Mr Chenthooran's application.
30. Furthermore, the Committee was satisfied from the evidence that the premises have preferred commercial gain over the promotion of the licensing objectives. The extracts of purchases made on 26 February, 2 April, 19 June, 23 July and 7 October by street drinkers cited earlier and the purchasing on non-duty paid alcohol is indicative of this. Even the fact that the premises remove all their regular goods during Notting Hill Carnival and predominantly stock alcohol without any price labels reinforces this contention. The fact remained that both PLHs are jointly and severally responsible for the premises and if Mr Anandankumariah genuinely was unable to manage the business he should have taken proactive measures to disassociate himself from the premises licence at an earlier stage.
31. If any of the parties are unhappy with the decision they are entitled to appeal to the magistrates' court within 21 days from the date of notification of this decision. This determination does not have effect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.

Licensing Sub-Committee 30 October 2014

Annex 1 – Conditions proposed by the PLHs