

## **DECISION NOTICE**

### **LICENSING ACT 2003**

#### **REVIEW OF PREMISES LICENCE BY STEVENAGE BOROUGH COUNCIL LICENSING COMMITTEE**

**PREMISES ADDRESS:** The Oval Wines, 9 the Oval, Stevenage. SG1 5RA

**LICENCE HOLDER:** Emrah Oruc

**REVIEW APPLICANT:** Hertfordshire Constabulary

**DATE OF HEARING:** 19 December 2024

**DATE OF DECISION NOTICE:** 23 December 2024

**DECISION:** To revoke the premises licence

#### **PRESENT:**

- **Councillors**

Ellie Plater (Chair), Sandra Barr, Alistair Gordon, Tom Wren, Peter Clark

**Council Officers**

Julie Dwan, Mary O'Sullivan Rory Cosgrove - Licensing; Simon Pugh, Legal Advisor; Alex Marsh – Democratic Services;

- **Responsible Authorities**

Police - Gillian Akroyd (Senior Licensing Officer), Sgt Matt Fathers, Sgt Karen Mellor, PC Courtney Kooistra, PC Steven Hill

Hertfordshire County Council Trading Standards - Elaine Knowles

- **Licence Holder - Oval Wines**

Emrah Oruc – Licence Holder; Graham Hopkins, Linda Potter – Licensing advisers.

#### **BACKGROUND:**

1. The Oval Wines is located in the shopping precinct at The Oval, Stevenage. It has a premises licence in place which authorises the sale of alcohol for consumption off the premises, Monday to Sunday between the hours of 07:00hrs and 23:00hrs.

#### **THE APPLICATION**

2. An application for a review of the premises licence for The Oval Wines, 9 the Oval, Stevenage. SG1 5RA had been made by Senior Licensing Officer Gill Akroyd of Hertfordshire Constabulary. Representations have been made by Hertfordshire Trading Standards as a Responsible Authority. No representations were made by other responsible authorities or by members of the public.

3. The basis for the review application is fully set out in the agenda for the Committee meeting. In summary the application for the review cites all four of the licensing objectives and are summarised in the report as follows:

#### **4. The prevention of crime and disorder**

- 4.1. *Evidence of multiple incidents of breaches of licence including supply/sales of illegal/illicit products, evidence of drugs paraphernalia and residue of cocaine in various public and private areas of the premises. Statements from Police Officers and supporting evidence is contained with this review application.*
- 4.2. *The premises have failed to observe their licensing conditions attached to the Premises Licence for The Oval Wines, predominantly Annex 2 Condition 1 which refers to the requirement for a digital CCTV system recording images which will be retained in an unedited form for up to 30 days and which shall be made available to any responsible authority upon request, however on multiple occasions when Police have requested CCTV footage it has been unavailable. The Designated Premises Supervisor has also failed to make himself available to Police.*
- 4.3. *Trading Standards officers have recently seized illegal items from these premises. On 3<sup>rd</sup> October 2024 Trading Standards Officer recovered illegal products from The Oval Wines including tobacco pouches, a number of cartons of cigarettes and a number of Viagra jellies, which can only be obtained following a consultation with a pharmacist. A witness statement and supporting documents from the Senior Trading Standards Officer have been provided by Police and is contained within this review application.*

#### **5. Public Safety**

- 5.1. *The Oval has a gang who are using the shop as their base, and are causing anti-social behaviour, and it is believed that they are dealing drugs from the shop. (See drug wipe results). There is evidence of knife related crime in the vicinity. On a daily basis known drug users, dealers and perceived gang members are both inside or just outside of the shop, and it is believed exchanges are being made and deals are taking place.*
- 5.2. *Evidence of multiple incidents of breaches of licence include sales of illegal/illicit products, evidence of drug paraphernalia and residue of cocaine in various areas of premises.*

#### **6. The Prevention of Public Nuisance**

- 6.1. *Members of the the 'Oval' gang appear to use Oval Wines as their hub, gathering in close proximity outside. Disruption and violent disorder by customers around the vicinity of Oval Wines, include gang related fights, and believed drug exchanges and dealings, causing distress and alarm to other businesses and their customers.*

#### **7. Protection of children from Harm/ Prevention of Public Nuisance**

- 7.1. *There was evidence throughout The Oval Wines off licence of drug use with the Police drugs wipes highlighting cocaine residue. There are various Intelligence reports which refer to drugs and young males attending the premises, (some as young as 11 years of age) which is a cause for concern. Knife carrying has been mentioned, CCTV shows suspects at The Oval were in possession of large machetes who were seen chasing a group of young people/children, some of whom sought refuge in The Oval Wines. No calls were made to Police regarding this incident from The Oval Wines at the time of the incident and CCTV was not available from the premises as required by the Premises Licence conditions.*

8. *Hertfordshire Police Constabulary are of the view that these premises will not conform, stating that this is evidenced by the sustained noncompliance with the Premises Licence and its conditions. In addition to this, the use of the premises for the purpose of selling illegal vapes, tobacco/cigarettes and evidence obtained of drugs (cocaine) within the shop. Police believe that the failure of the premises licence holder to adhere or promote the four licensing objectives coupled with the absence of the designated premises supervisor from the premises and that they are non-contactable suggests that neither are in a position to continue to manage the premises to meet their obligations under the Licensing Act 2003. It is the request of the Police that the premises licence be revoked in its entirety.*
9. The application for review was accepted as valid and duly made by the Council on 29<sup>th</sup> October 2024.
10. Subsequently Hertfordshire County Council Trading Standards made representations in support of the review application, based on the discovery on the premises of illegal tobacco products and a prescription-only medication.

## **The Hearing**

### **Police Evidence**

11. The Police representatives spoke to the basis of their application for review of the licence. They spoke of incidents connected with the premises and said that they had serious concerns about the management of the premises.
- 11.1. On 3 October 2024 Police had been present when illegal items had been seized. These were illegal tobacco products and cigarettes. A Viagra-type jelly was found in the shop which could only be sold with a prescription. There were items of drugs paraphernalia ( a grinder and small bags). £4,000 in cash was found in a bag and was seized. No explanation was offered for the presence of the cash.
- 11.2. Drugs wipes were used on the visit, which showed strong indications of cocaine use in the toilet, sink and kitchen area, as well as on both sides of the customer counter. However, no drugs were found on the premises.
- 11.3. The License Holder had failed to produce CCTV footage in breach of licence conditions. The request for CCTV footage was made in the light of a very serious incident on 30 August 2024 involving gang violence in the vicinity of the premises. CCTV footage was requested on a subsequent visit to the shop on 3 October 2024 but, again, was not available.
- 11.4. It was a licence condition that the Designated Premises Supervisor, Mr Polat, should be readily available but attempts by the Police to contact him had failed.
- 11.5. The Police were concerned that the “Oval Gang” was using the shop as a base and was dealing drugs either within the shop or in its close vicinity.
- 11.6. The Police believed that the Licence Holder supported customers against the Police and did not co-operate in supporting Police efforts to tackle crime and disorder in the area. On one occasion, gang members escaped through the shop. The Licence Holder had not contacted the Police to alert them to the incident on 30 August despite being present and did not volunteer witness information.

- 11.7. In response to questions from the Licence Holder and his representative, the Police confirmed that no drugs or weapons had been found on the premises and that they had not seen drug dealing taking place on the premises. The Police mentioned the absence of CCTV footage from the premises.
- 11.8. The Police showed CCTV footage of the incident on 30 August 2024. This showed a clash between members of rival gangs, some of whom were seen carrying machetes and knives. A group was shown congregating outside the premises in the lead-up to the incident. The Police believed that those involved had links to "County Lines" drug dealing operations.
- 11.9. In response to questions from the Licence Holder and his representative, the Police confirmed that no drugs or weapons had been found on the premises and that they had not seen drug dealing taking place on the premises. The Police mentioned the absence of CCTV footage from the premises. The Licence Holder's representative asked the Police why they had not arrested Mr Oruc. The Police said that they did not have evidence to support arrest and clarified that they were not suggesting that Mr Oruc was drug dealing.

### **Trading Standards Evidence**

12. Elaine Knowles from Hertfordshire County Council's Trading Standards Department said that one of the Department's roles was to deal with the sale of illegal tobacco.
- 12.1. She had attended Oval Wines on two occasions and had seized illegal tobacco on both. She said that it was clear that the tobacco did not comply with packaging regulations which were compulsory for tobacco sold in the UK. It was illegal to sell tobacco which was non-compliant and duty would not have been paid on such tobacco.
- 12.2. It was possible that the tobacco was counterfeit and had been sent for tests. However, the results were not yet available.
- 12.3. Ms Knowles said that the storage of the tobacco was suspicious, as it was concealed in drink pallets from which cans had been removed and was kept separate from legitimate tobacco which was on sale.
- 12.4. Ms Knowles explained the problems caused by illegal tobacco sales. Counterfeit tobacco infringed intellectual property rights and was often linked to other sorts of criminality such as money laundering and modern slavery. Not complying with packaging requirements undermined the health approach to the sale of tobacco, avoiding the health messages required by law. The non-payment of duty was also serious, as it deprived the Exchequer of revenue and allowed tobacco to be sold more cheaply, making it more attractive to children.
- 12.5. In addition to illegal tobacco, the inspections uncovered the concealed presence of five packets of "Kamagra Oral Jelly" which Ms Knowles believed contained the same active ingredient as Viagra, which was a prescription-only medicine, and which could not lawfully be sold from the shop.

### **The Licence Holder's Evidence**

13. The Licence Holder, Mr Oruc, and his representative, Mr Hopkins, addressed the Committee. They had submitted a list of additional licence conditions which Mr Oruc would be happy to accept to address the issues raised by the review.

- 13.1. They placed much of the responsibility for issues with the premises on the failings of the Designated Premises Supervisor, Mr Polat. Mr Polat had recently been dismissed and Mr Oruc would personally take on the responsibilities of the DPS.
- 13.2. Mr Oruc had not worked for the previous owner and had no contact with him. Mr Oruc had come to the premises with a clean record.
- 13.3. Mr Oruc's representative criticised the licence conditions, saying that they were out of date and the CCTV conditions were "sparse".
- 13.4. The CCTV was now working satisfactorily. Initially, the hard disk for the system was too small to store CCTV images for the time period required by the licence. This was why the images were not available on the first visit by the Police. Mr Oruc was not aware of the small size of the hard drive and had subsequently replaced it. A failure by his CCTV provider in setting the system was responsible for the absence of images on the second visit.
- 13.5. The presence of illegal products was not disputed but Mr Oruc was unaware of this. The sales had been the responsibility of two members of staff who had been making sales "under the counter". They had since been dismissed. A proposed condition requiring the retention of receipts for tobacco and alcohol products would address the problem.
- 13.6. The £4,000 cash found on the premises had belonged to another member of staff, who had stored it there as it was a safer place to store the cash than the member of staff's shared accommodation.
- 13.7. Mr Oruc was as surprised as the Police about the positive results when the premises were swabbed for drug residue. He thought it was possible that staff may have used drugs in the toilets but he did not understand the results for the shop counter.
- 13.8. Mr Oruc, for the future, was happy not to sell drugs paraphernalia but pointed out that their sale was not unlawful and that the items found were sold in lots of shops. This did not make him a drug dealer.
- 13.9. There was no evidence of weapons on the premises and it was not illegal for young people to visit the premises. However, Mr Oruc was happy for a condition to limit the number of under-18s in the shop to two at a time.
- 13.10. Mr Oruc had no links to the gang. He had no power to stop them congregating outside his shop. He was not acquainted with the alleged gang members. He did not know names but recognised some faces. He said that local traders had massive problems and had complained many times. They didn't call police to incidents as they were fearful. Mr Oruc did not want to be perceived as a "snitch". The Police suggestion that he was linked to drug dealing put him at risk as drug dealers might mistakenly think he was a rival. He said that there was no CCTV evidence of drug sales to 11-year-olds. Tackling criminality by gangs was the responsibility of the Police, not him. Mr Oruc would welcome a much greater Police presence, including immediately outside his premises.
- 13.11. Mr Oruc was questioned by Police representatives at the hearing regarding CCTV footage of the incident on 30 August 2024. It had become apparent shortly before the hearing that Mr Oruc was visible in the CCTV footage obtained from other sources. He was asked why he had not identified himself as a witness when the Police had requested CCTV footage from him. Mr Oruc said that he had not been asked to make a statement. The Police said that, as Mr Oruc had

not said that he was present, they had not known that he was a witness. Mr Oruc said that he didn't want to get involved with Police or gang matters.

13.12. Further questions sought to clarify issues around CCTV, the drugs residue found and whether Mr Oruc felt intimidated by the gang presence. Mr Oruc was afraid of being "labelled" by the gang but would welcome uniformed Police presence.

13.13. Councillor Barr asked Mr Oruc why he had not called the Police when he became aware of unlawful activities by members of staff. Mr Oruc's representative said that he had not wished to involve the Police.

13.14. Cllr Wren asked about the CCTV incident involving the machetes. Mr Oruc said that he had seen a machete and that his main objective was to get everyone away from his business. This explained the apparent gesturing to gang members. People had run into his shop and he had opened the rear door as he wanted to get them out. He did not want a physical confrontation. Mr Hopkins said that the installation of an electronic lock on the front door, along with a "two at a time" rule would tackle issues in the future. Mr Oruc said that he was completely happy to work with the Police.

13.15. Cllr Clark clarified how long Mr Oruc had been responsible for the premises and asked whether there had been other incidents. Mr Oruc said that there had been only minor incidents and confirmed that these had been recorded in the incident book.

## **Summing Up**

14. Opportunity was given for the parties to sum up.

14.1. The Police referred to a meeting with Mr Oruc on 19 April 2023, notes of which were appended to the Licensing Committee report at page 39. (Item B1.) At the meeting Mr Oruc had seemed knowledgeable about licensing issues. At the meeting, the Police had offered help with issues of anti-social behaviour.

14.2. Mr Hopkins, for Mr Oruc, stated that they had said what they wanted to say. Mr Oruc deplored the sale of illegal tobacco and other unlawful activities. He had proposed an extensive list of additional conditions and asked that Mr Oruc be given another chance.

## **Findings of fact**

15. The facts were, largely, not in dispute, although responsibility for the incidents that led to the review application was contested.

15.1. The Licensing Committee made the following findings of fact:

15.1.1. The Licensee had breached the licence condition requiring CCTV images to be available for inspection in an unedited form for up to 30 days.

15.1.2. The Designated Premises Supervisor had failed to make himself available to the Police, as required by the licence.

15.1.3. The premises were used for the storage of illicit/illegal tobacco products and prescription-only medicines.

15.1.4. The premises were used for the sale of drugs paraphernalia.

- 15.1.5. There was clear evidence of unlawful drug use within the premises, as shown by the positive results for cocaine shown by swabbing.
- 15.1.6. The premises acted as a focus for a local gang, which congregated in the vicinity of the shop. Gang activity was linked to incidents of violence and disorder, as shown in the CCTV footage from 30 August 202.
- 15.1.7.** Mr Oruc had not pro-actively co-operated with the Police in addressing incidents of illegality and anti-social behaviour.

### **Decision**

16. The Committee's decision is that the premises licence in respect of the premises should be revoked.

### **The Licensing Objectives**

17. The Committee took careful account of all the material before it, including representations made by the Licensee.

- 17.1. The Committee also took account of the statutory guidance published under section 182 of the Licensing Act 2003. Of particular relevance is the guidance from paragraph 11.24 on "reviews arising in connection with crime.

- 17.2. The Committee was guided by paragraph 11.26, which states:

*Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.*

- 17.3. Mr Oruc had not disputed incidents of illegality on the premises but denied personal responsibility. Whilst the Committee's view was that Mr Oruc had done little, if anything, to tackle illegality, the guidance makes it clear that personal culpability is not the issue.
- 17.4. Paragraph 11.27 says that there is "certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously". These include the use of licensed premises "for the sale or storage of smuggled tobacco and alcohol". It was not clear whether the illegal tobacco found at the premises was smuggled or counterfeit but in either case the Committee decided to treat this particularly seriously.
- 17.5. Paragraph 11.27 also refers to the use of licensed premises "as the base for the organisation of criminal activity, particularly by gangs". The Committee accepted that the premises were a focus for gangs meeting in the vicinity, it did not find that the premises were used by gangs for the organisation of criminal activity. However, there was evidence of the premises being used for criminal activity, including the seizure of illicit tobacco and prescription-only medication, the significant amount of cash and the extensive cocaine residues found.

17.6. The breaches of the licence conditions relating to CCTV and the availability of the Designated Premises Supervisor were the personal responsibility of the licence holder, who could not avoid responsibility merely by saying that they were caused by members of staff. Similarly, the Licensee was responsible for ensuring that the premises were not used for unlawful purposes.

17.7. The Committee concluded that the incidents referred to above meant that the operation of the premises did not promote, and were to the detriment, of the licensing objectives. Taking these in turn:

#### **The prevention of crime and disorder**

17.8. The premises failed to promote this objective as a result of the incidents of breaches of licence including the failure to record CCTV properly and to ensure that the Designated Premises Supervisor was available.

17.9. The premises also failed to promote this objective as a result of multiple instances of illegality in the use of the premises, including the discovery of cocaine residue, and the finding of illegal tobacco products and prescription-only medication.

17.10. The licence holder failed to engage proactively with the Police in tackling issues of illegality and anti-social behaviour.

17.11. Whilst not in itself unlawful, the sale of drugs paraphernalia from the shop was not helpful in promoting this objective in a location which had clear problems with drug use and drug dealing.

#### **Public Safety**

17.12. The premises failed to promote this objective by acting as a base for a local gang to congregate. The gang was associated with illegal activities and anti-social behaviour. The incident of 30 August 2024 involving the use of machetes, and the use of the premises as an escape route, was particularly serious.

17.13. The storage of illicit tobacco and prescription-only medication also posed a risk to public safety as did the use of the premises for the consumption of illegal drugs.

#### **Prevention of Public Nuisance**

17.14. The focus of the premises as an area for congregation by a local gang contributed to public nuisance in the area, as illustrated by the CCTV footage from 30 August 2024.

17.15. The Committee also decided that the absence of pro-active engagement by the Licence Holder with the Police in tackling anti-social behaviour and illegality – in fact his admitted avoidance of engagement – was detrimental to the promotion of this activity.

#### **Protection of Children from Harm**

17.16. The premises were accessible to children and the use of the premises for illegal drug use could place children at risk.

17.17. The premises acted as a focus for the congregation of gang members in the vicinity. Some, if not all, of the gang members were young persons. The focus given by the premises to gang congregation was detrimental to this objective.



### **Reasons for revoking the licence**

- 17.18. The Committee decided that action beyond words of advice or a warning was called for. The premises were linked to serious illegality, breach of licence conditions and anti-social behaviour. The Committee therefore considered the other options available to it. These are:
- 17.19. To modify the conditions of the licence. The Committee considered carefully the additional conditions proposed on behalf of Mr Oruc. However, it was clear that Mr Oruc was in significant breach of licence conditions and had, by his own account, exercised little effective management of the premises since becoming the licence holder. The Committee therefore had no confidence that the imposition of additional licence conditions would be an effective step in ensuring the proper promotion of the licensing objectives.
- 17.20. To exclude a licensable activity from the licence. The Committee did not consider that this was a relevant option, given the limited scope of licensable activities covered by the licence.
- 17.21. To remove the designated premises supervisor. The Committee concluded that this would not address the issues that had given rise to the review. In any case, the licence holder was proposing to become the designated premises supervisor and the Committee had little confidence in him exercising a satisfactory supervisory role.
- 17.22. To suspend the licence for a period not exceeding three months. The Committee concluded that suspension would not adequately address the issues leading to the request for a review. There was nothing to suggest that suspension would be adequate in ensuring that the licensing objectives were met.
- 17.23. To revoke the licence. The Committee concluded that this was the appropriate option, given the severity of the issues raised in this review, and taking account of the statutory guidance.

### **18. RIGHT OF APPEAL**

- 18.1. Any person who is aggrieved by the Committee's decision has the right to appeal to the Magistrates' Court. Any such appeal must be made within 21 days of the date of this notice. The Committee's decision will not come into effect until the end of the period for appealing the decision or until the conclusion of any appeal.