

## **APPENDIX D**

### Report from Area Licensing Practitioner – Avon & Somerset Constabulary

#### **Representation in relation to an application for the grant of a Premises Licence under the Licensing Act 2003**

#### **Stokrotka, 5a East Reach, Taunton, TA1 3EN**

##### **Area Licensing Practitioner's Report**

I am Area Licensing Practitioner Nicola Cooper of Avon & Somerset Constabulary and make representations in respect of the above application for a grant of a premises licence at the above address. I have considered the application submitted and on behalf of the Chief Officer of Police wish to make representations that the likely effect of the grant of this application undermines the Prevention of Crime & Disorder, Public Safety and the Protection of Children from Harm licensing objectives as outlined below:

##### **Premises History**

18/5/18 – The previous Designated Premises Supervisor withdrew their consent leaving the previous owner with no authority to sell alcohol. PC 2187 Pethick delivered a letter to the owner of the premises at that time instructing them that they had no authority to sell alcohol and remove all alcohol from the shelves.

Dec 18 – We were informed by the Licensing Authority that the licence had subsequently lapsed due to non-payment of fee.

From Companies House, part of the [www.gov.uk](http://www.gov.uk) website, the company was subsequently listed as dissolved on the 20<sup>th</sup> March 2020. No application was received to transfer the licence within the 28 day period following dissolution and therefore, a new premises licence would need to be applied for.

##### **The key elements of our representations are as follows:-**

25/8/20 – An application was submitted to transfer the premises licence from Mrs Kubiszyn Michalik in to the name of Stokrotka Taunton Ltd whilst I was away on leave. At that time the licence was still in the name of the previous owner. No application for a Designated Premises Supervisor was submitted at this time and there remained no authority to sell alcohol. We were not in receipt of any other applications prior to this.

05/03/21 - Leeann Leeds of Somerset West & Taunton Council (SWaT) Case Manager, had telephoned the premises following a “bounced back” email. I believe Leeann at that time explained that they could not sell alcohol and she posted them the

licence which stated this. As a Personal Licence Holder Mrs MICHALIK should have been aware that there was no Designated Premises Supervisor but she continued to sell alcohol unlawfully. She obtained her Personal Licence Certificate on 5<sup>th</sup> August 2019 and therefore. She told me she took the exam in polish which I am currently querying.

15/03/21 – We were made aware of an underage sale from this premises whilst alcohol was being sold unlawfully. See my attached statement **appendix 1.**

18/03/21 – Due to this report I visited the premises and met with Mrs MICHALIK for the first time. I asked if I could purchase alcohol from the shop and she responded “yes what would you like”? I explained who I was and she said she had been selling alcohol from the premises since December 2020. At the time of my visit, alcohol was on display behind the counter and also a large amount of stock of alcohol could be seen in the stock room at the rear of the premises. Mrs MICHALIK said she had a premises licence and had been speaking to the council since last November 2020. However, there was no licence on display in the premises at the time of my visit which is a legal requirement under s.57 of the Licensing Act 2003. From our records, it was my understanding that the premises did not have any authority to sell alcohol and I tried to advise her of this fact. She also had in her possession, but not displayed, the current licence dated 5<sup>th</sup> March 2021 stating “*no alcohol can be sold until an application to vary the DPS has been received by the Licensing Authority*”. This was written 3 times on the licence under Licensable Activities, Name of Designated Premises Supervisor and also the Personal Licence section and was very clear. I pointed this out to her. A copy of the summary of this licence is attached as **appendix 2.** During this visit, I was in the premises for approx. 1 hour and I found that Mrs MICHALIK had difficulty understanding licensing processes. Her basic English is good but limited when discussing more complex issues and she became very frustrated and upset. She called her son Marcel by telephone who attended the premises to assist. Although Marcel spoke good English it was still very difficult explaining the situation to him and he accused me of harassing them despite me being there to make legitimate enquiries and try to resolve the issues. It appeared that Mrs MICHALIK had obtained her Personal Licence and also transferred the licence into the name of Stokrotka Ltd but she HAD NOT applied to be a Designated Premises Supervisor and therefore, she had no authority to sell alcohol. The licence in her possession clearly stated this but she didn’t understand and neither did her son. She had previously been assisted by her friend Claudia and the council had explained the situation. I believe Mrs MICHALIK genuinely felt that she had a licence but her lack of understanding continues to be a concern.

During this visit I also advised Mrs MICHALIK that should we receive an application to add her as Designated Premises Supervisor, we would regrettably be submitting representations due to her lack of understanding of UK licensing laws and also an underage sale which had taken place when the premises had no authority to sell alcohol. I asked her about her staff and Mrs MICHALIK told me her husband occasionally helped out in the premises. She said she kept a refusal register but was unable to produce it. As I knew that they had no authority to sell alcohol, I asked them to remove all alcohol from the shelves. I also felt it would be difficult for Mrs MICHALIK

to understand not to sell to street drinkers and her premises may be targeted by them. We have a local agreement with all other off licenses in the Town Centre not to sell to street drinkers, nor sell single cans of alcohol in order to reduce anti-social behaviour in the area and promote the licensing objectives. It later came to light that it appears Mrs MICHALIK has and is being targeted by local street drinkers who have been racist & verbally abusive towards her.

19/03/21 - An application was received to add Mrs Anna Kubiszyn MICHALIK as Designated Premises Supervisor. Mrs MICHALIK had now obtained the services of Tony Clarke from JMC Licensing Consultants to assist with the application on her behalf following my visit. However, I undertook further enquiries with Companies House which clarified that the previous licence had lapsed and I advised the Licensing Authority.

24/03/21 – Following on from the DPS application, I made a further visit to the premises to check if the premises had any training records. Mrs MICHALIK said that she was the only one who sold alcohol which contradicted her previously telling me her husband occasionally helps out. There were no staff training records for any other staff member. At the time of this visit both of Mrs MICHALIK's son's were present and the youngest, aged 17 yrs was present behind the counter with the alcohol. I asked why he was there and he said "to protect his mother". Whilst present in the shop they telephoned June Clarke. She asked Mrs MICHALIK's son to record my conversation whilst I was in the shop which I did not allow. This was a legitimate licensing visit. I conveyed this to June Clarke by phone after my visit and asked her to email me with her identity. She said that we were "targeting the premises because they had no conditions on their licence". She said she knew nothing about the client and had never met them. I tried to explain the situation about the applications but she disagreed with me and was argumentative. I explained a receipt could not guarantee the submission of an application which had never been served on Police and would be invalid.

The next day I spoke to Mrs MICHALIK by phone to see if they had working CCTV but she did not understand and I subsequently spoke to her eldest Son by phone who said CCTV did not work and they didn't know how to work it.

Following my visit, June Clarke has messaged Mrs MICHALIK's youngest son asking for a letter about my visit signed by them stating that they will "hopefully make PC Nicola Cooper go away and save your mum from going to a hearing" see attached [appendix 3](#). Mrs MICHALIK showed me this text message during my visit on the 24<sup>th</sup> May.

25/03/21 - PCSO Amy Borthwick visited the shop (see statement [appendix 4](#)) to see if the underage sale had been recorded on CCTV. Mr MICHALIK was working in the shop, Mrs MICHALIK was not there and he would not let PCSO Borthwick assist with the CCTV and she was unable to ascertain whether or not it was working at that time. The monitor recording customers was on display which breaches data protection.

26/03/21 – Having made further enquiries, I clarified with the Licensing Authority that the premises licence was actually "dead" following the business being dissolved on

20<sup>th</sup> March 2020 as suspected. This deemed the earlier transfer application invalid as there was no licence to transfer. The premises were advised by letter that all alcohol must be removed from display in the shop. Letter attached [appendix 5](#). June Clarke did telephone me and briefly discussed this and advised they would be applying for a licence at which time I advised Mrs Clarke that we would be submitting representations due to an underage sale.

14/04/21 – We received information that the premises may be handling stolen goods. CCTV were tracking known shoplifters from shops with full bags of stolen goods to Stokrotka.

25/04/21 - We have viewed CCTV footage on 3/4/21 between 1032 & 1040hrs whereby two known shoplifters were seen to leave Lidl supermarket at Tangier with a basket of meat. A female was then seen shortly after with 2 full “bags for life” on her shoulder cycle directly to Stokrotka leaving her bike outside. She was in the store for 8 minutes and left with empty bags holding something in her hand, it could only be small enough to be money or a small package. She then cycled off. See Statement of evidence from PC 2187 Pethick [appendix 6](#).

13/5/21 - We received a new application for the grant of a Premises Licence.

Having scrutinised the application, I don't believe that the agent JMC Licensing Consultants has consulted with Somerset West & Taunton Statement of Licensing Policy, nor visited the premises or has any knowledge of the area. The address for JMC Licensing Consultants on the application is Belfast. Section 8.41 of the s.182 Guidance specifies that applicants are expected to have regard to the statement of licensing policy for the area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area.....” s.8.42 states that “applicants are expected to obtain sufficient information to enable them to demonstrate .....the local area and physical environment including crime & disorder hotspots.....risks posed by the local area and local crime initiatives etc. However, JMC Licensing Consultants have not had any consultation with me during or before the 28 day consultation period to discuss what measures we would require to promote the Licensing Objectives as also suggested in Somerset West & Taunton's Statement of Licensing Policy under section 2.0 – General principles.

When I have researched JMC Licensing Consultants on the internet, I have located an almost identical application form for a premises in Rotherham and the content of the application does not appear individual to this premises but possibly a “cut and paste” from another application not local to this area.

The application states that “roller shutters have been installed at the front.....” which is not the case. The original premises plan submitted also stated shutters were installed but during the consultation period this has also been changed on the 19<sup>th</sup> May without re-submission of the application. This re-iterates my view that this application is not specific to this premises or it's surroundings. Although the agent has made changes to the application, they have taken objection to the Licensing Authority

requesting a slight change to the wording of conditions eg changing the words will or shall to “must” which would be our preference. These slight amendments would still have been consistent with the operating schedule and only the Licensing Authority can impose conditions on a premises licence. s.3.4.7 of the Council’s Statement of Licensing Policy specifies that compromises can be reached and can be “treated as a change to the Operating Schedule”. I am not aware that this agent has had previous dealings with Somerset West and Taunton Council and cannot understand their reluctance to work in partnership, which is not helpful to their client.

### **The Operating Schedule**

At no time did the agent consult with us regarding our specification for CCTV. At present there does not appear to be a working system installed at the premises and I think it unlikely that the applicant would understand our requirements. Monitors are on display in the premises and the shop owner has failed to remove these despite my advice during an earlier visit in March, which breaches data protection regulations. I have also provided the shop with a copy of our CCTV document which is endorsed by the Licensing Authorities across Somerset see **appendix 8**. We have been told by the premises the system is to “scare people off” and doesn’t work. Mrs MICHALIK advised me that someone called Daniel will be fixing it and I have asked for his details but these have not been forthcoming.

### **The prevention of Crime & Disorder**

This section states that “all incidents of disorder” will be recorded. However, on a recent visit to the premises Mr & Mrs MICHALIK both advised me that they are on the receiving end of anti-social behaviour, racial abuse and harassment from local people wanting free drinks and then being verbally abusive to Mrs MICHALIK on a regular basis. I subsequently sent a Polish Police Officer to investigate further who was met with hostility. Mrs MICHALIK advised the officer that “it happens all the time and she is not scared of them”. None of these incidents have been reported to us despite this being proposed on the application. On my last visit on the 13<sup>th</sup> May Mrs MICHALIK produced a small book with polish writing which she describes as a list of people who have been in the premises offering to sell her stolen goods but none have been reported to us. This translates to “THIEVES” Blond Female – 04.05 2:30, Small guy on bike – 18.05 1-2, Dark hair in a ponytail slim with (??backpack) 19.05 1.50, Long hair – 24.5 16:00. This document is attached as **appendix 7**. This records 4 visits in a few weeks in May which causes me some concern about the premises being targeted with no reports to police. Furthermore, recording of incidents in Polish will not satisfy responsible authorities when conducting legitimate visits and these need to be recorded in English as well.

### **Public Safety**

On my visit to the premises on 13<sup>th</sup> May several of Mrs MICHALIK’s customers came in without masks and were not challenged. The wearing of masks in shops is mandatory unless exempt and liable to a fine. I spoke to a customer who could not give me a legitimate reason nor was he exempt. Mrs MICHALIK continued to serve people without masks despite my advice and the premises is very small. I believe this

undermines public safety. There were signs displayed but Mrs MICHALIK was not enforcing them. I have no confidence that any other signage in the shop would be enforced eg. “leave quietly” and “challenge 25” as put forward by the agent.

### The Protection of Children from Harm

When Mrs MICHALIK was unlawfully selling alcohol there were no training records or refusal registers. Mrs MICHALIK advised me that she was always in the shop and she was the only person who sold alcohol which is untrue. Mr MICHALIK has been seen working alone in the shop and the report of an underage sale also advises that a male sold the alcohol. At this time, there was no age verification policy nor any Challenge 25 posters or “due diligence” in place despite Mrs MICHALIK being the holder of a Personal Licence.

With the evidence that I have submitted and the contents of this report, I do not believe that Mrs MICHALIK has a good understanding of licensing laws and despite regular visits and advice from me and also to her friends and family, there continues to be a lack of understanding. I would have no confidence in the level of training that she could provide bearing in mind there has already been an underage sale of alcohol from this premises.

### Visits to the premises

During my visits Mrs MICHALIK becomes very frustrated and upset as did Mr MICHALIK who started shouting and swearing during a visit. I have also been called racist which is unacceptable. My only interest in any premises is compliance with UK Licensing Laws and not specific to any individual. I have felt that the family use this phrase quite “freely” and my polish colleague was also met with some hostility and racism was mentioned. We need premises to be working in partnership with us and to not do so, undermines the fundamental basics of the Licensing objectives. Any discrimination by us would be unlawful and we have due regard to eliminate unlawful discrimination and promote equality and diversity. If issues arise we need to be able to work with a premises on complex issues and sometimes compliance and this hostility is preventing any positive working relationships &/or discussions which I feel may have been exacerbated by the agent employed as is evidenced in their text message. The Council’s Statement of Licensing Policy under section 3.0 recognises that the “co-operation and partnership remain the best means of promoting the licensing objectives.” Also during my visits to the premises, various customers have become involved and are having to translate and explain things to the premises.

### Conditions

I do not think that applying conditions, no matter how robust, will allay our concerns as I do not think Mrs MICHALIK would have a sufficient understanding of compliance and their importance. The breach of a premises licence condition is a criminal offence and this would be setting them up to fail and lead them into enforcement which is costly and time consuming but more importantly would not be fair on them. Conditions

should not be imposed to manage a premises where we have doubts that premises can meet their obligations and comply with the law.

### **Conclusion**

I cannot recall having previously objected to any premises licence application in this area and this decision has not been taken lightly. It is always our intention to support local businesses especially in these very difficult times. However, to grant this licence would undermine the licensing objectives based on the evidence that I have provided.

We submit our representations and also specifically request that Mrs MICHALIK is in attendance at the licensing panel either in person or remotely so that the Committee may make their own assessment and speak directly to her in respect of our concerns.

This completes our submission to the panel.

### **See also Attachments:**

Appendix 1 – Statement regarding underage sale on 14<sup>th</sup> March 2021.

Appendix 2 - Summary of Premises Licence and letter – dated 5<sup>th</sup> & 9<sup>th</sup> March

Appendix 3 – Text message from JMC Licensing Consultants

Appendix 4 – Statement from PCSO Borthwick regarding visit.

Appendix 5 – Letter from council advising licence lapsed dated 25<sup>th</sup> March

Appendix 6 – Statement from PC Pethick.

Appendix 7 - Shop log of “thieves”.

Appendix 8 – Our minimum guidance for CCTV document

**Nicola Cooper 8820**

**Area Licensing Practitioner**

**9<sup>th</sup> June 2021**