

**Meeting of the Licensing Act 2003 Sub-Committee
held at the Town Hall, Peterborough on Monday, 18 November 2013**

RECORD OF PROCEEDINGS

1. Apologies for Absence	There were no apologies for absence received.
2. Declarations of Interest	There were no declarations of interest.
3. Application	<p>Review of Premises Licence – Mini Poli:</p> <ol style="list-style-type: none"> 1. Ashwood House, Unit A, Enterprise Way, Bretton Way Peterborough PE3 8YG 2. 44 – 46 Ivatt Way, Peterborough, PE3 7PN
3.1 Application Reference	<ol style="list-style-type: none"> 1. MAU 068075 – Ashwood House, Unit A, Enterprise Way, Bretton Way Peterborough PE3 8YG. 2. MAU 068076 – 44 – 46 Ivatt Way, Peterborough, PE3 7PN.
3.2 Sub-Committee Members	<p>Councillor Thacker (Chairman) Councillor Peach Councillor Davidson</p>
3.3 Officers	<p>Adrian Day, Licensing Manager Colin Miles, Lawyer – Legal Advisor to the Sub-Committee Karen S Dunleavy, Governance Officer – Clerk to the Sub-Committee</p>
3.4 Applicant	Trading Standards
3.5 Nature of Application	<p><u>Application Type</u></p> <p>Review of existing Premises Licences.</p> <p>The Committee was informed that the Premises Licence Holder for Mini Poli situated at 44-46 Ivatt Way, had surrendered the Premises Licence. The Committee agreed that the review into the Licence would be withdrawn.</p> <p><u>Summary of Review Application</u></p> <p>In accordance with section 51 of the Licensing Act 2003, following the submission of an application to review the premises licence from Trading Standards, a Responsible Authority, the Licensing Authority was required to hold a hearing.</p> <p>The application to review, served by Trading Standards, was received on 23 September 2013, which had included a summary of the witness statement from Her Majesty's Custom and Excise (HMRC). A representative from HMRC was also present in order to answer questions that the Licence Holder's representative or Sub-Committee had.</p> <p>A representation in support of the review and recommendations had been</p>

	<p>received from Cambridgeshire Constabulary.</p> <p>A summary of the issues raised within the representations included:</p> <ol style="list-style-type: none"> 1. Her Majesty's Revenue and Customs (HMRC) had seized alleged non UK duty paid alcohol from the premises on 4th July 2013; 2. The premises had failed to provide documentation for the seized products to prove UK duty had been paid; and 3. Guidance issued under section 182 of the Licensing Act 2003 recommended revocation, even in the first instance.
3.6	<p>Licensing Objective(s) under which representations were made</p> <p>1. Prevention of Crime and Disorder</p>
3.7	<p>Parties/Representatives and witnesses present</p> <p><u>Applicant / Responsible Authority</u></p> <p>Karen Woods who presented the case on behalf of Trading Standards. Trading standards was also accompanied by Jeannette Kett of HM Revenue & Customs (HMRC).</p> <p><u>Responsible Authorities</u></p> <p>PC Grahame Robinson, who was present on behalf of Cambridgeshire Constabulary.</p> <p><u>Licensee / Representative</u></p> <p>Mr David Dadds, the Licence Holder's Barrister.</p>
3.8	<p>Written representations and supplementary material taken into consideration</p> <p><u>Applicant / Responsible Authority – Trading Standards</u></p> <p>Consideration was given to the application and HMRC witness statement submitted by Trading Standards and Cambridgeshire Constabulary and attached to the Sub-Committee report.</p>
3.9	<p>Facts/Issues in dispute</p> <p><u>Issue 1</u></p> <p>Whether the review application would further support the 'Prevention of Crime and Disorder' Licensing Objective.</p>
3.10	<p>Oral representations</p> <p><u>Request for Private Hearing from the Licensee's Representative</u></p> <p>The Licensee's Representative addressed the Committee and requested for the Hearing to be held in an exempt session, in order to avoid discussing, in public, any commercially sensitive information or evidence that may be relied upon at a criminal proceeding.</p> <p>The Legal Advisor to the Sub-Committee advised that the Committee would discuss information in relation to the Licensing Review Hearing, which had been presented before them and that it was not a matter for a criminal trial in the future for the Committee to take any consideration on.</p> <p>Following the request to hold an exempt session and the Legal advice provided, the Committee agreed that the Licensing Hearing would continue to be held in a public session.</p>

Regulatory Manager

The Regulatory Manager addressed the Sub-Committee and outlined the main points with regards to the application.

An application had been received from Trading Standards in their capacity as a Responsible Authority regarding the seizure of alleged non duty paid alcohol from the premises namely Mini Poli – Ashwood House, Enterprise Peterborough. The Committee were informed that there had been an administrative error in production of the initial notice presented to Mini Poli, however, the timings of the notice and the error had not had a material effect on the licence process followed and had not prejudiced the case in any way.

Licensee's Representative

Mr Dadds, addressed the Sub-Committee. The key points raised during his address, and following questions from the Sub-Committee, included:

- The company were a responsible employer and had paid the relevant taxes;
- There had been a larger quantity of alcohol received for Mini Poli on 4 and 5 June 2013, in order to stock a new warehouse for which there had been no invoices. Mini Poli were rejecting the stock unless the wholesaler was able demonstrate that there had been duty paid;
- There had been ciders and beers seized by HMRC where invoices showed that VAT had been paid. HMRC had claimed that they were unable to reconcile the invoices with the goods seized;
- The goods seized were for wholesale which was an unlicensed activity;
- Mini Poli had been unable to confirm purchases were made legitimately as HMRC retained the invoices and paperwork, and that some deliveries were made without delivery notes;
- The company was not responsible for import duty;
- Mini Poli had offered HMRC access to the company's accountants through ARWC consultancy;
- There had historically been an existing problem with imported alcohol for UK wholesalers, as it was unclear of what duty had been paid. A Government exercise was currently underway to improve the stamping and registration scheme of duty for wholesalers;
- Mini Poli's old delivery system had not, in the past, operated in an efficient way. However, going forward, the Mini Poli warehouse had adopted a new recording system, which consisted of an electronic processing for invoices;
- Invoices for Mini Poli were kept for one quarter of the businesses period, the documentation would then be sent to their accountant;
- Mini Poli had utilised, a variety of suppliers located in the United Kingdom (UK), however, a recent change had resulted in the company utilising one supplier within the UK;
- Mini Poli, via ARWC consultancy firm sought the return of the seized goods and paperwork by letter dated 8 August 2013;
- There had been no evidence that the goods had been smuggled as no traceability exercise had been undertaken, which would involve matching a product barcode;
- Some of the delivery notes may have been located on the pallets that had been seized; and
- HMRC would be required to take photographic evidence collected in

seizures as part of their process. This evidence would provide batch codes relating to the goods.

Mr Dadds wished for the Sub-Committee's Legal Officer's advice to be noted within the minutes, regarding how his advice would be offered to Committee and that it was not required to be conducted in public.

Trading Standards and HMRC

Trading Standards and HMRC responded to comments and questions raised by the Sub-Committee and the Licensee's Representative. In summary the responses included:

- Where two visits were conducted by HMRC Officers at Mini Poli, Ashwood House on 12 and 18 June 2013, there was no matching invoice records held within the records of business or any proof of verification, evidence for the goods seized on 3 and 4 July;
- HMRC Officers afforded Mr Baractor a further day in which to present supporting evidence for the goods seized;
- No appeal against the seizure of goods was made by Mini Poli within the Statutory 28 days and therefore the alcohol was condemned in accordance with the Customs and Excise Act 1979;
- There had been no traceability exercise conducted due to the lack of matching paperwork provided;
- Mini Poli would have been aware of the return visits in order to produce supporting evidence for the goods seized, however, on the first visit there had been no match, on the second and third visit to Mini Poli there was no further paperwork received that had matched the goods seized;
- It was not clear from a letter received from ARWC consultants whether they or Mini Poli were requesting a condemnation appeal through the Magistrate's Court, the letter sent had been followed by numerous phone calls by HMRC to Mini Poli seeking clarification;
- Traceability was an audit exercise and once the trail had been broken then no trace would be available on the goods. The batch number would display a name and address, however, Mini Poli did not contact the supplier in order to provide paperwork in relation to the batch numbers and address; and
- As the seizure was not appealed against the goods were deemed forfeited and were destroyed. No records of batch code and addresses had been maintained by HMRC of the goods destroyed.

4. Decision

The Sub-Committee listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. The Sub-Committee found as follows:-

The Sub-Committee considered the various options available, these being:

- a) to modify the conditions of the premises licence;
- b) to exclude a licensable activity from the scope of the licence;
- c) to remove the designated premises supervisor from the licence;
- d) to suspend the licence for a period not exceeding three months; or
- e) to revoke the licence.

The decision of the Licensing Act 2003 Sub-Committee was to revoke the

licence for the premises, known as Mini Poli, Ashwood House, situated on Enterprise Way, Bretton Way, Peterborough, due to the Committees serious view of non-payment of revenue.

The reasons for the Sub-Committees decision included:

- The facts were that 51,506.46 litres of beer and cider, and 9.5 litres of spirits were seized from three premises by HMRC on 4 July 2013, following a number of visits to Mini Poli 44-46 Ivatt Way, Peterborough;
- HMRC stated that £66,167.48 of revenue had not been paid on the seized goods;
- HMRC stated that no formal request for the return of the seized goods had been received within the requisite 28 day period;
- It appeared that there was no record of batch numbers or of provenance held by HMRC;
- A letter dated 8 August 2013 received by HMRC on 7 August 2013 from ARWC Consulting Ltd acting for the Premises Licence Holder contained a request that the goods be returned. In a reply dated 7 August 2013 HMRC enquired if there was to be official challenge to the seizure of goods and if so, a Condemnation Hearing before the Magistrates' Court would take place. There had been no reply to this letter;
- To date, no invoices or proof of revenue paid had been supplied to HMRC by the Licence Holder nor had any documents seized, shown that revenue was paid;
- HMRC visited Mini Poli in Ivatt Way on 12 June, 18 June and 3 July 2013.
- Mini Poli were afforded the opportunity to supply evidence of revenue paid on a number of alcohol purchases;
- The paper records seized by HMRC on 4 July 2013, had not shown that revenue had been paid. The Sub-Committee was directed to section 118 of the Customs and Excise Management Act 1979, which placed a duty on revenue traders to keep records, and furnish records and information on request;
- Government Guidance at paragraph 11.28, stated that 'where the premises was being used to further crimes, it had been expected that revocation of the licence even in the first instance should be considered';
- At paragraph 11.27 the guidance stated 'certain criminal activity should be treated particularly seriously. These include for 'the sale of smuggled alcohol';
- There had been no information that demonstrated revenue had been correctly and lawfully paid on the seized alcohol;
- This had been a large operation in which a significant amount of alcohol was seized. There were three premises involved with the sale and or storage of alcohol, Mini Poli at Ivatt Way, Enterprise Way and a warehouse used to store goods;
- In light of the evidence presented at the hearing there had been more weight attached to the information provided by the officers, than to the submissions made on behalf of the licence holder;
- Appropriate conditions could not be applied by the Sub-Committee as existing law had covered the collection of revenue and any conditions would only reflect that existing law; and
- Given the amount seized and the ongoing issues with seeking proof of purchase, the Sub-Committee did not consider that a change of

	<p>Designated Premises Supervisor was appropriate, nor a suspension of the licence would suffice in these circumstances.</p> <p>Any party in objection to the decision may appeal to the Peterborough Magistrates Court within 21 days.</p>
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Chairman

10.00am – 2.07pm