

Meeting of the Licensing Act 2003 Sub-Committee
 held at the Town Hall, Peterborough on Monday 28 January 2013

RECORD OF DECISION

1. Apologies for Absence	There were no apologies for absence received.
2. Declarations of Interest	There were no declarations of interest.
3. Application	Review of Premises Licence – Super Poli (also known as Mini Poli), 613 Lincoln Road, Peterborough, PE1 3HA
3.1 Application Reference	MAU 066319
3.2 Sub-Committee Members	Councillor Thacker (Chairman) Councillor Hiller Councillor Saltmarsh
3.3 Officers	Terri Martin, Regulatory Officer – Licensing Colin Miles, Lawyer – Legal Advisor to the Sub-Committee Gemma George, Senior Governance Officer – Clerk to the Sub-Committee
3.4 Applicant	Trading Standards
3.5 Nature of Application	<p><u>Application Type</u></p> <p>Review of existing premises licence.</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 6 December 2012 and supplementary information from Trading Standards had been received on 19 December 2012.</p> <p>A representation in support of the review and recommendations had been received from Cambridgeshire Constabulary and the Director of Public Health, NHS Peterborough, as Responsible Authorities. No other representations had been received from any of the remaining Responsible Authorities.</p> <p>A summary of the issues raised within the representations included:</p> <ul style="list-style-type: none"> • Her Majesty’s Revenue and Customs (HMRC) had seized 57.4 litres of alleged non UK duty paid alcohol from the premises on 30/10/12; • The premises had failed to provide documentation for the seized

	<p>alcohol to prove UK duty had been paid;</p> <ul style="list-style-type: none"> • The UK Duty evaded was £579.42; • Guidance issued under section 182 of the Licensing Act 2003 recommends revocation, even in the first instance, (Section 11.28) • On 11 January 2012 HMRC Officers seized 0.8kg of tobacco and 880 cigarettes from a vehicle (outside the premises) registered to Mr Huseyin Koc. The revenue due on the seized tobacco and cigarettes was £286.12; and • Underage Sales. <p>Further representations from the Millfield and New England Regeneration Partnership (MANERP) and Peterborough City Council's Neighbourhood CAN-do Team in their capacity as 'Other Persons' had been received. A summary of the issues raised included:</p> <ul style="list-style-type: none"> • The management of the premises not upholding the licensing objectives; • Deliberately defrauding HMRC, resulting in unfair trading advantage providing cut priced alcohol in an area concentrated with licensed premises; • Criminal gain; and • Fully supportive of revocation of the premises licence.
3.6 Licensing Objective(s) under which representations were made	<ol style="list-style-type: none"> 1. The Prevention of Crime and Disorder 2. The Protection of Children from Harm
3.7 Parties/Representatives and witnesses present	<p><u>Applicant / Responsible Authority</u></p> <p>Mrs Karen Woods, who presented the case on behalf of Trading Standards.</p> <p><u>Responsible Authorities</u></p> <p>PC Grahame Robinson, who was present on behalf of Cambridgeshire Constabulary.</p> <p>Mr Rod Grant, who was present on behalf of NHS Peterborough.</p> <p><u>Other Persons</u></p> <p>Ms Cate Harding, Neighbourhood Manager.</p> <p>Mr Brian Gascoyne, Chairman of MANERP.</p> <p><u>Licensee / Representative</u></p> <p>Mrs Ewa Walas, the Licensee was in attendance. The Licensee did not have a representative.</p>
3.8 Pre-hearing considerations and any decisions taken by the Sub-Committee relating to ancillary matters	<p>A late request had been received from a Ward Councillor, Councillor Nazim Khan, to be permitted to address the Sub-Committee.</p> <p>The Sub-Committee, and all persons present, agreed to permit Councillor Khan to speak.</p>

3.9 Oral representations

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

Applicant / Responsible Authority

Karen Woods addressed the Sub-Committee. The key points raised during her address, and following questions from the Sub-Committee were as follows:

- The management operating the licence, were gaining from crime;
- During December 2011 the premises had failed a test purchase. There was also a history of failed test purchases, three in total;
- During the test purchase, a Police Officer had witnessed illicit tobacco products being sold. The tobacco was being stored in a potato sack by the front door;
- The hand rolling tobacco was suspected to be counterfeit due to the nature of the packaging;
- On 30 October 2012, a joint inspection by Trading Standards and HMRC was conducted;
- HMRC Officers had seized 57.4 litres of mixed spirits;
- The proprietor had been unable to produce receipts or invoices to prove that duty had been paid on the goods;
- The revenue due on the goods was £547.52;
- No claim against forfeiture had been received;
- During a previous visit on 11 January 2012, 0.8kg of hand rolling tobacco and 880 king sized cigarettes were seized alongside a vehicle outside of the shop registered to Mr Huseyin Koc, brother of Hasan Koc the previous premises licence holder;
- The revenue on the tobacco and cigarettes was £286.12;
- A complete revocation of the licence was sought.

Responsible Authority – Cambridgeshire Constabulary

PC Grahame Robinson stated that Cambridgeshire Constabulary always supported the work of Trading Standards and he further supported the view that the licence should be revoked in its entirety.

Responsible Authority – NHS Peterborough

Mr Rod Grant stated that he further supported the view that the licence should be revoked, particularly due to the failed test purchases.

Other Persons – Councillor Nazim Khan, Ward Councillor

Councillor Khan stated that he supported the application from Trading Standards. There were numerous issues with licensed premises within his ward and complete revocation of the licence was sought in this instance.

Other Persons – Brian Gascoyne, MANERP

Mr Brian Gascoyne drew the Sub-Committees attention to his written representation reiterated his comments. Revocation of the licence in its entirety was supported.

	<p><u>Licensee</u></p> <p>Mrs Ewa Walas addressed the Sub-Committee. The key points raised during her address, and following questions from the Sub-Committee, were as follows:</p> <ul style="list-style-type: none"> • All alcohol had been purchased from the cash and carry; • The staff at the premises had not been aware that the alcohol was illegal. They did not want to sell illegal alcohol; • The cash and carry had refused to give Mrs Walas an invoice; • The cash and carry had stated that a receipt would be provided once of all the alcohol had been sold. <p>.</p> <p><u>Summing Up</u></p> <p>All parties were given the opportunity to summarise their submissions and there were no further comments made by any party.</p>
<p>3.10 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 additional information, including a HMRC Officer witness statement, submitted by Trading Standards and attached to the Sub-Committee report.</p> <p><u>Responsible Authorities</u></p> <p>Consideration was given to the written submissions attached to the Sub-Committee report from Cambridgeshire Constabulary and the Director of Public Health, NHS Peterborough.</p> <p><u>Other Persons</u></p> <p>Consideration was given to the written submissions attached to the Sub-Committee report from Cate Harding, Neighbourhood Manager and Brian Gascoyne, Chairman of MANERP.</p>
<p>3.11 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> <p><u>Issue 2</u></p> <p>Whether the review application would further support the ‘Protection of Children from Harm’ Licensing Objective.</p>

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:-

- Criminal activity had taken place at the premises resulting in Her Majesty's Revenue and Customs having been defrauded of due lawful revenue, by the sale of illicit tobacco and alcohol;
- In October 2012 some 57 litres of non duty paid alcohol had been seized;
- In January 2012, 880 illicit cigarettes and a quantity of hand rolling tobacco had been seized;
- No notice of intention to claim against forfeiture was received by the authorities within the statutory period;
- Underage sales of alcohol had taken place, twice in 2009 and once in 2011.

During its deliberations, the Sub-Committee considered the various options available, including:

- Suspension of the licence;
- Revocation of the licence;
- The imposition of further amended/additional conditions; and
- Removal of the Designated Premises Supervisor.

The Sub-Committee found that there had been an extended period of poor management of the premises resulting in the Licensing Objectives being largely ignored; therefore the Sub-Committee did not consider that a change in the Designated Premises Supervisor or additional conditions attached to the licence would promote the Licensing Objectives of:

- The Protection of Children from Harm; and
- The Prevention of Crime and Disorder.

The Government Guidance stated at paragraph 11.27:

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- For illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- For the sale of smuggled tobacco and alcohol.

And at paragraph 11.28:

“Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

In the Licensing Authority's own Statement of Licensing Policy it states at paragraph 16.1 that:

“Reviews of premises licences represent a key protection for the community where matters arise at the premises in connection with any of the four licensing objectives”

The Sub-Committee agreed that the community needed protecting from the operation for the reasons outlined.

The decision of the Licensing Act 2003 Sub-Committee was therefore to revoke the premises licence.

Any person party to the proceedings, who was dissatisfied with the decision, could appeal to the Peterborough Magistrates’ Court within 21 days of the decision.

Chairman
13.30pm – 14.30pm