



Alcohol & Gambling Licensing Sub-Committee

Minutes of a meeting of the Alcohol & Gambling Licensing Sub-Committee held as a Remote Meeting via Zoom on Tuesday 1 February 2022 at 1.00 pm.

Present:

Councillor Andrew Kilbride (Chair)
Councillor Brian Sargeant
Councillor Mike Warren

Officers:

Martin O'Connell, Senior Licensing Enforcement Officer
Ruksana Munir, Licensing and Litigation Solicitor
Maisie McInnes, Democratic Services Officer

1. Appointment of Chairman for the meeting of the Sub-Committee

It was proposed by Councillor Brian Sargeant and seconded by Councillor Mike Warren that Councillor Andrew Kilbride be appointed Chair of the Sub-Committee.

Resolved

(1) Councillor Andrew Kilbride be appointed Chair of the Sub-Committee.

2. Declarations of Interest

There were no declarations of interest.

3. Review of Premises Licence - Riga International, 89 Kettering Road, Northampton NN1 4AW

The Senior Licensing Enforcement Officer submitted a report which requested the Sub-Committee consider an application from Northamptonshire Police for a review of the premises licence in accordance with Section 51 of the Licensing Act 2003, in respect of Riga International at 89 Kettering Road, Northampton, NN1 4AW.

Resolved

(1) As set out in the attached decision notice.

The meeting closed at 1.47pm

Chair: _____

Date: _____



**WEST NORTHAMPTONSHIRE COUNCIL
ALCOHOL AND GAMBLING LICENSING SUB-COMMITTEE
1st FEBRUARY 2022**

NOTIFICATION OF DETERMINATION

Application for the review of a premises licence made by Northamptonshire Police (“the Applicant”) in respect of International Riga International, 89 Kettering Road Northampton, NN1 4AW (“the Premises”), in accordance with section 51 of the Licensing Act 2003 (“the Act”).

Applicant: Northamptonshire Police (“the Applicant”).

Premises License holder: Shorsh Omar Abdullah - Attended but was unrepresented (“the Premises License holder”).

Hearing date: 1st February 2022 at 1pm (previously adjourned to this date on 26th January 2022 without being heard) - held remotely via Zoom and streamed live via West Northamptonshire Council’s YouTube channel.

The Alcohol and Gambling Licensing Sub-Committee (“the Sub-Committee”) carefully considered the following:

- The written report (“the Report”) prepared by Martin O’Connell, Senior Licensing Enforcement Officer for West Northamptonshire Council (“the Council”),
- A copy of the Application appended to the Report at Appendix A,
- Photographs submitted by the Applicant and appended to the Report at Appendix D and a copy letter supporting the review application submitted by Public Health Northamptonshire and appended at Appendix E,
- Oral submissions made on behalf of the Chief Officer of Northamptonshire Police by PC David Bryan during the hearing in support of the review application,
- Oral submissions made by the Premises License holder and
- The statutory guidance issued under section 182 of the Licensing Act 2003.

The Hearing

The Premises License holder indicated that he had been unable to secure legal representation at the hearing, but that he was content for it to proceed.

PC David Bryan attended the hearing as the representative of Northamptonshire Police. The reason for the review application was that an unannounced inspection of the Premises had been undertaken with HM Customs and other statutory agencies, including the Applicant, on 17th November 2021. During this, a large quantity of foreign branded cigarettes and packets of loose tobacco, in respect of which import tax had not been paid (“the illicit tobacco products”), was discovered stored in a residential flat above the Premises. Furthermore, a hole was discovered in the ceiling of the Premises’ stockroom which would allow objects to be passed between it and a hole in the floor of the flat above

The Applicant believed that the illicit tobacco products were being stored in the flat with a view to being sold “under the counter” in the Premises, at a reduced price to similar products in respect of which import tax had been paid and were lawfully available for sale. In this scenario, a customer would ask if they had any cheap cigarettes/tobacco, the order passed to a person in the residential flat above and the required products passed through the hole in the floor to be sold. This would ensure that no illicit tobacco products were stored within the Premises itself and could not be found during an inspection similar to the one that took place on 17th November 2021.

The Applicant advised that the hole had been discovered during the inspection and a search of the flat subsequently took place. A lone male was discovered escaping from the flat just before Customs and Police officers could gain access. This individual was not pursued and remains unknown. The Premises License holder was not in attendance during the inspection on 17th November 2021.

The Applicant also advised that test purchase sales of similar tobacco products had been made at the Premises by persons acting on behalf of Northamptonshire Trading Standards service on 16th September 2020 and 19th June 2021. No person was prosecuted for offences in connection with these incidents, but the inspection of 17th November 2021 had been arranged primarily because of these two incidents.

The Premises License holder confirmed that he was not at the Premises on 17th November 2021 and that he was the leasehold owner of both the shop and the residential flat above, which he rented out to tenants. He was unaware of the identity of the person seen by the Applicant fleeing the flat on 17th November 2021.

He stated that he had been aware of the ceiling hole in the stockroom since he took over the operation of the Premises in 2018, but was unaware that the flat above was used to store illicit tobacco products for sale by persons unknown on the Premises or even that such sales were taking place at the Premises in general.

When asked to do so by PC Bryan, with the permission of the Members, the Premises License holder could not name any of the licensing objectives other than the prevention of crime and disorder, despite confirming that he had previously undertaken personal license holder training.

In general, the Premises License holder acknowledged that the test purchase sales and the discovery of illicit tobacco products likely to be intended for sale at the Premises had taken place whilst he held the premises license, but asked for one more chance from the Members to prove he could uphold the licensing objectives. He stated he may have to close the Premises if his license is revoked.

Martin O’Connell confirmed that Mr Abdullah has been the Premises License holder for the Riga International store since 15th June 2020, meaning that the two test purchases and the inspection of 17th November 2021 both took place whilst held the premises license.

Legal Advice

The Sub-committee received legal advice as follows:

1. The questions of fact to be determined in relation to this matter were:
 - a) Whether two test purchases of illicit tobacco products were made at the Premises during the period that Mr Abdullah was the Premises License holder, namely on 16th September 2020 and 19th June 2021,
 - b) Whether the illicit tobacco products found in the flat above the Premises on 17th November 2021 were available for “under the counter” sale in the Premises, by



means of being passed through the hole between the hole, as alleged by the Applicant, notwithstanding that they were not stored or found on the Premises themselves and no proceeds of sale or other direct evidence of sales having taken place was found during the inspection and

- c) Whether the Premises License holder had some lawful control over the residential flat above the shop in which the illicit tobacco products were stored

as alleged by the Applicant. The appropriate standard of proof was the civil standard, namely on the balance of probabilities.

2. The relevant licensing objective in relation to the review was the prevention of crime and disorder, as set out in the Report.
3. The relevant Statement of Licensing Policy, namely the Northampton Borough Council Statement of Licensing Policy 2020, contained no specific provisions in relation to the issues raised in the relevant representation made by the Police.
4. Paragraphs 11.24 to 11.28 of the section 182 statutory guidance issued under the Act relating to premises reviews, particularly in connection with crime were relevant.
5. The options legally available to the Sub-Committee in accordance with section 52 (4) were set out in the Report.
6. Any action taken should be appropriate and proportionate and should be the minimum necessary in promote the licensing objectives, considering the evidence before the hearing.

Decision and Reasons

The Hearing Members unanimously decided to revoke the Premises Licence.

Their reasons for this decisions were;

1. They found that, on the balance of probabilities, two test purchase sales of illicit tobacco had indeed been made on the Premises on 16th September 2020 and 19th June 2021.
2. They found that, on the balance of probabilities, the illicit tobacco products found in the flat above the Premises on 17th November 2021 had been available for “under the counter” sale on the Premises itself and that the hole between the shop and the flat was used to supply the products to the shop to be sold upon request.
3. They also found, on the balance of probabilities, that the Premises License holder was the leasehold owner of the flat above the Premises and that he was responsible for renting it out.
4. Although there was no evidence before the Members that the Premises License holder had been personally involved with the sale of illicit tobacco products at the Premises on 16th September 2020, 19th June 2021 or at any other time, the Members were of the opinion that, as he was the Premises License holder when the two test purchase sales and the inspection of 17th November 2021 were carried out, Mr Abdullah was

responsible for multiple failures to uphold the licensing objective of the prevention of crime and disorder that had or were likely to have taken place on the Premises since 15th June 2020.

5. This was not an acceptable situation for the Members and so the only appropriate, proportionate and reasonable response was to revoke the Premises License in accordance with section 52 (4) (e) of the Act.

The Premises Licence Holder or Police may appeal this decision to a Magistrates' Court within 21 days of receipt of a written copy of this decision.

Councillor Mike Warren

Chair of the West Northamptonshire Council Alcohol and Gambling Licensing Sub-Committee held on 1st February 2022

Dated: 1st February 2022