



**WEST NORTHAMPTONSHIRE COUNCIL
ALCOHOL AND GAMBLING LICENSING SUB-COMMITTEE
6th July 2022**

NOTIFICATION OF DETERMINATION

Application for the review of a premises licence made by Northamptonshire Police ("the Application") in respect of Nasz Sklep, 10 Alexandra Terrace, Northampton, NN2 7SJ. ("the Premises"), in accordance with section 51 of the Licensing Act 2003 ("the Act").

Applicant: Northamptonshire Police ("the Applicant").

Premises Licence Holder: Mr. Ramazan Omar Mustafa ("the Licence Holder").

Hearing date: Tuesday 6th July 2022 at 2pm – Remote hearing via Zoom.

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 and further material submitted in support by the Applicant at Appendix D, namely witness statements made by:
 - a. Paul McMahon, Anti-Illicit Trade Operations Manager for Western Europe for Gallaher Limited/JTI UK, dated 11th January 2022.
 - b. "Eve" Investigator for Gallaher Limited/JTI UK, dated 18th January 2022.
- Oral submissions made during the hearing by PC David Bryan on behalf of the Applicant.
- The statutory guidance issued under section 182 of the Act.

**The Hearing
Applicant**

The basis for the Application was that on three separate occasions, namely 9th and 30th September 2021 and 5th January 2022, "Eve", an Investigator for Gallaher Limited/JTI UK, a member of the Japanese Tobacco International group of companies, purchased a number of packets of cigarettes from the Premises. These tobacco products had been allegedly smuggled into the UK illegally without payment of import duty and were being knowingly kept and offered for sale on the Premises, which is an offence under section 144 of the Act.

The Applicant alleged that the License Holder had been personally working at the Premises on 9th and 30th September 2021, along with a female colleague, when the sales of cigarettes took place as set out in "Eve's" witness statement of 18th January 2022. The statement also indicated that he had not been present on the Premises when the sale of tobacco products took place on 5th January 2022.

The Senior Licensing Enforcement Officer confirmed that the Premises License had been transferred to the License Holder on 2nd February 2022, in accordance with section 44 of the Act. The Council had received the section 42 transfer application on 13th January 2022, which included a request that the transfer have immediate effect in accordance with section 43. The

transfer to the License Holder therefore took interim effect on 14th January 2022. Neither the Chief Officer of Northamptonshire Police nor the Border Agency served a notice of objection to the transfer upon the Council and so the premises license was transferred permanently to the License Holder on 1st February 2022.

The Applicant's contention was that, because the license holder was allegedly on the premises and personally assisted in two sales of smuggled cigarettes in September 2021, he undoubtedly knew that they were being stored on the premises and, despite the fact that he was not the License Holder when all three sales of smuggled cigarettes took place, the prevention of crime and disorder licensing objective could only be promoted by revoking the premises license.

The License Holder

The License Holder did not attend the hearing. The Senior Licensing Officer told Members at the outset of the hearing that the License Holder had notified him by email on 15th June 2022 that he did not intend to attend the hearing. The Officer had responded the same day reminding the License Holder of the options available to the Sub-Committee, advising him to seek his own legal advice about the matter and asking him to let the Council know if he changed his mind and decided that he would be attending the hearing on 6th July 2022.

The Officer advised the Sub-Committee that he had received no further communication from the License Holder. The Sub-Committee was satisfied that he had been given notice of the hearing and sufficient opportunity to attend, but had seemingly chosen not to do so. In the circumstances, they decided to proceed with the hearing in his absence.

Legal Advice

The Sub-Committee received legal advice as follows:

1. The questions of fact to be determined in relation to this matter is with regard to the sale of smuggled tobacco products alleged to have taken place at the Premises on 9th and 30th September 2021 and 5th January 2022. The relevant standard of proof is the civil standard, namely "on the balance of probabilities" or "more likely than not".
2. Relevant parts of the section 182 Licensing Act 2003 statutory guidance (April 2018 edition) relating to premises license reviews in connection with the prevention of crime and disorder, specifically paragraphs 11.24 to 11.28.
3. The options legally available to the Sub-Committee were set out in the Report.
4. Any action taken should be appropriate for the promotion of the relevant licensing objectives after taking into account the evidence before the hearing and the representations of both parties. It should also be proportionate.
5. Relevant case law was Carmarthenshire CC v Llanelli Magistrates [2009] EWHC 3016 (Admin) and R. (on the application of Bassetlaw DC) v Worksop Magistrates' Court [2008] EWHC 3530 (Admin), both regarding the correct test to be applied when deciding whether to take action in respect of a premises license upon review.

Decision and Reasons

The Hearing Members unanimously decided to revoke the Premises Licence.

Their reasons for this decision were;

1. The Sub-Committee Members found that smuggled cigarettes had, on the balance of probabilities, been sold to "Eve" on 5th and 30th September 2021 and 5th January 2022. They also found, using the same evidential standard, that the License Holder was



physically present on the Premises on 5th and 30th September 2021 and had personally participated in the sale of smuggled cigarettes on both occasions.

2. The Members gave great weight to the hearsay evidence of “Eve”, despite the fact that it was given via an anonymous witness statement. In making this decision as to weight, they paid particular attention to the photographic exhibits and found that it was more likely than not that the person identified as “subject 2” was the License Holder.
3. The Members also gave great weight to the evidence of Paul McMahon with regard to his evidence that the cigarettes sold to “Eve” on the dates in question had been smuggled into the country and stored at the Premises as alleged, which is an offence under section 144 of the Act.
4. They noted that paragraph 11.27 of the section 182 statutory guidance specified that the use of licensed premises for the sale and storage of smuggled tobacco should be treated particularly seriously. They also noted that Paragraph 11.28 stated that where licensing authorities determine that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the license – even in the first instance – should be seriously considered.
5. The Members were satisfied that the sales of smuggled cigarettes constituted a serious failure to promote the licensing objective of preventing crime and disorder, notwithstanding that the License Holder had never been prosecuted for an offence under section 144 of the Act. They also acknowledged that the Applicant had not objected to the transfer of the premises license to the License Holder, despite having received notification of the transfer application after the sale of smuggled cigarettes that had taken place on 5th January 2022.
6. The Members believed that, on the balance of probabilities, the License Holder must have known in September 2021 that the cigarettes in question had been smuggled and were being stored and sold in the shop. He had participated in two such sales. As a result, they found on the balance of probabilities that he must have known smuggled cigarettes were being stored on the Premises on 5th January 2022, as a result of his personal involvement with those sales.
7. Taking into account the Applicant’s evidence about the three sales of smuggled cigarettes from the Premises and their experience of reviews concerning the sale of smuggled tobacco products generally, they found that it was highly unlikely that those sales were isolated incidents. They were simply three occasions which had come to the attention of the Applicant and which they could evidence. On the balance of probabilities, the Members were satisfied that the crime prevention objective had been undermined on three occasions, that it was highly likely it had been undermined on other, undetected occasions and that it was more likely than not that it would continue to be undermined whilst the License Holder continued to hold the Premises License. They reached this finding fully aware that no objection to the transfer application of January 2022 had been made by the Applicant, but considered that this fact alone did not

mitigate their findings with regard to the License Holder's knowledge of the storage and sale of smuggled cigarettes from the Premises on at least two previous occasions.

8. As a result, the only appropriate and proportionate action that could be taken in the circumstances was to revoke the Premises License. Removing the Designated Premises Supervisor would be unlikely to promote the licensing objective in question because the License Holder also fulfilled this role and, given the Members findings, a period of suspension would not ensure that the objective would be promoted in the long-term.

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 Keith Holland-Delamere

Chair of the West Northamptonshire Council Alcohol and Gambling Licensing Sub-Committee
held on 6th July 2022

Dated: 12th July 2022