

Licensing Sub-Committee

Monday, 13th February, 2012

PRESENT: Councillor S Armitage in the Chair
Councillors K Bruce and R Downes

209 Election of the Chair

Councillor Armitage was elected Chair for the meeting

210 Late Items

There were no late items of business

211 Declarations of Interest

There were no declarations of interest

212 "Deli Polska" - Application for the Review of a Premises Licence for Deli Polska (Polish Delicatessen), 171 Dewsbury Road, Hunslet, Leeds LS11 5EG

The Sub-Committee considered an application made by West Yorkshire Police under Section 51 of the Licensing Act 2003 for the Review of a Premises Licence in respect of Deli Polska 171 Dewsbury Road Leeds LS11

The following were present at the meeting

**West Yorkshire Police
(WYP) – the applicant**

Mr R Patterson

PC K Arkle

Deli Polska

Miss M Czerwec – Premises Licence Holder

Mr K Brown – Designated Premises Supervisor

Mr J Vantoch-Wood - Officer of Her Majesty's Revenue and Customs (HMRC)

Prior to the commencement of the hearing, Mr Brown raised a procedural matter and stated that Deli Polska was not the name of the premises. The Legal Services Officer stated that this was the name on the Premises Licence and queried why this had not been raised previously and an amendment sought. Mr Brown stated this could have been an error on his part; details of how this could be amended and the fee for doing so were provided

Licensing Officers presented the report and the Sub-Committee heard firstly from West Yorkshire Police

PC Arkle presented the application and stated WYP were of the view that revoking the Licence was a proportionate and necessary course of action and that although HMRC was not a statutory authority, it supported this view

The Sub-Committee then heard from Mr Vantoch-Wood of HMRC who explained that his work involved checking for non UK duty paid goods, ie tobacco and alcohol and where these were found they would be seized with the possibility of a wider search being made

In respect of the premises, visits had been made on several occasions where quantities of non UK duty paid cigarettes and alcohol had been found, with some of the cigarettes being concealed

PC Arkle highlighted the fact that six months after the Premises Licence had been granted, crime was being committed at these premises and had continued for two years

Mr Vantoch-Wood outlined a visit made to Miss Czerwiec's home where large quantities of cigarettes, alcohol and cash were found, with two arrests being made. In response to questions from the Chair, Mr Vantoch-Wood stated that the spirits were legitimate vodka but that no UK duty had been paid on it. Similarly there was nothing to suggest that the tobacco in the cigarettes had been tampered with, rather it was a Polish brand, with no UK duty having been paid on it

Reference was made to the photographic images within the papers submitted for the meeting, with Mr Vantoch-Wood explaining that several images showed a paper towel dispenser in the premises, close to the counter which was found to contain Polish cigarettes. Cigarettes had also been found under the counter and the alcohol which had been seized had been located on the shelves and in crates

Members were informed that Miss Czerwiec had another premises in Kirkgate Market which had also been searched by HMRC, with Miss Czerwiec's father being seen leaving the premises carrying a refuse bag, which was found to contain cigarettes, with HMRC being of the view that he was trying to conceal evidence. Members noted that the premises in Kirkgate Market had not been granted a Licence when it was considered in December 2011

PC Arkle referred to the arrest of Miss Czerwiec's partner at the premises on 9th June 2011 for possession of stolen goods where he stated he lived above the shop. Investigations had found this not to be the case and that his address was the same as Miss Czerwiec's. WYP had visited the address and found cash and receipts relating to 171 Dewsbury Road. Vehicles registered to this man had been found as well as a white van without number plates which contained a number of large drums containing petrol/diesel. It was the view of HMRC that this was fuel purchased in Europe with no UK duty having been paid on it

PC Arkle accepted that some intelligence received about the premises had not been correct however there was evidence of criminal behaviour and that there had been a determined course of action by the Premises Licence Holder or a person allowed on the premises; that this was not a case of a one-off incident and that following the seizure of smuggled goods, this illegal activity had continued

The Sub-Committee then heard from Mr Brown, the DPS. Whilst it was his intention not to refer to matters being dealt with under criminal proceedings, the Legal Services Officer explained that the Sub-Committee needed a full explanation of events to reach a decision

Mr Brown stated that it had been Miss Czerwiec's partner who had been involved in these matters; that has the father of Miss Czerwiec's child she had been dragged along with what had been happening but that they had now separated and he had left the family home

On advice from the Legal Services Officer, Miss Czerwiec, as the Premises Licence Holder, was encouraged to address the Sub-Committee and provided the following information:

- that she was the owner of the premises
- that the goods found in her home had been found in the kitchen and dining room and were for personal use and as gifts to staff
- that her former partner had been in the shop when the goods had been seized

In response to questions from Members, Miss Czerwiec advised that her relationship had broken up with her former partner during summer 2011 but that up to two months ago he had continued to work in the premises and that now Miss Czerwiec's sister worked with her in the shop, with another worker being employed at her premises in Kirkgate Market

Mr Brown explained his role as DPS and stated that he had been a DPS since 2008; that he was a DPS of another premises and also an agency driver; that he advised on the sale of alcohol; that he would visit the premises at 171 Dewsbury Road, inspect the register etc but that he did not know about the cigarettes concealed in the paper towel dispenser. Following the seizure of smuggled goods he had spoken to Miss Czerwiec's partner about this in a heated exchange but had not been aware of the seizure of goods previously at the premises, or those found at Miss Czerwiec's home or the shop in Kirkgate Market

Mr Brown asked the Sub-Committee for leniency and suggested regular monitoring of the premises

PC Arkle referred to the visits to the premises made by HMRC and that on each occasion that smuggled goods were found, paperwork was left there and that the DPS could have been expected to have seen this. The fact that this was a family business was highlighted with reference being made to the cigarettes found in the possession of Miss Czerwiec's father upon leaving the premises located in Kirkgate Market

PC Arkle advised the Sub-Committee that a change of personnel or reduced opening hours was not considered sufficient and that WYP considered that revoking the Premises Licence was the only option in this case

Following full consideration of the options open to the Sub-Committee in the determination of Review applications and the representations by the Police, HMRC, the Designated Premises Supervisor and the Premises Licence Holder, together with the guidance issued under Section 182 of the Licensing Act 2003. And noting that the sale of smuggled goods was considered a serious activity with revocation of the licence to be considered even as a first offence. The Sub-Committee noted there had been four visits to various premises under the control of the Premises Licence Holder by HMRC in a two year period which had each resulted in seizure of non UK duty paid goods. Paperwork had been left on each occasion following the seizure of smuggled goods

The Sub-Committee considered the comments of the DPS that he had no knowledge of these visits and that he was aware of his responsibilities as a DPS, a role he fulfilled at another premises

The Sub-Committee also considered the comments of the Premises Licence Holder who accepted no responsibility for any of the goods found at the premises even though she worked there. She blamed these incidents on her ex-partner and that the 14,920 cigarettes and 51.3 litres of spirits found at her home were for personal use. She accepted that her ex-partner had taken some of these goods into the licensed premises to be offered for sale

The Legal Adviser sought views from all parties on the steps they considered necessary for the promotion of the licensing objectives. The Police considered that the only option was revocation and that the Premises Licence Holder had no suggestions to make

After considering all the information the Sub-Committee agreed with West Yorkshire Police; they were not satisfied with the explanation given by the Premises Licence Holder and had no confidence in the management team

RESOLVED - That the Premises Licence be revoked