

**MINUTES OF LICENSING SUB-COMMITTEE
(Alcohol and Regulated Entertainment)**

21 MARCH 2017

PRESENT:

Councillors Mrs Garcia (Chairman), Mrs Roodhouse and Srivastava

1. DECLARATIONS OF INTEREST

There were no declarations of interest.

2. APPLICATION FOR THE REVIEW OF THE PREMISES LICENCE RELATING TO WISLA POLSKI SKLEP, 8 NORTH STREET, RUGBY, CV21 2AB

The Sub-Committee considered a report (Part 1 – agenda item 2) concerning an application for a review of the premises licence for Wisla Polski Sklep, 8 North Street, Rugby, CV21 2AB.

RESOLVED THAT— the application referred to in the report of the Head of Environment and Public Realm be determined as set out in Annex 1 to these minutes.

CHAIRMAN

RUGBY BOROUGH COUNCIL RECORD OF HEARING

1. **APPLICANT**

Name	Establishment
Warwickshire County Council	Trading Standards

APPLICANT'S REPRESENTATIVE

Mr Simon Coupe
Mr Peter Rowland) Officers who conducted the search at the premises
Mr Darshak Kacha)

Premises Licence Holder

Mr Hasan Aziz

REPRESENTATIVE

June Clarke –Licensing Consultant and Trainer

2. **RESPONSIBLE AUTHORITIES**

Name	Service
Sgt Stuart Powell	Warwickshire Police
Mr Paul Jacques	Warwickshire County Council, (Children's Services)
Mrs Penny Clarke	Rugby Borough Council (Licensing)

3. **COMMITTEE PANEL**
Councillors Mrs Garcia, Mrs Roodhouse and Srivastava

Chaired by: Councillor Mrs Garcia

4. **HEARING CLERK**

Marian Allen – Senior Legal Officer

5. Outline of Applicants Case

The premises licence was issued to Mr Hasan Azizi on 20 September 2016.

The premises are licensed for the retail sale of alcohol and also sell tobacco products from a gantry behind the counter.

Under the Licensing Act 2003 the premises are required to take steps to promote the four licensing objectives. It is the opinion of Trading Standards that the licensing objectives to prevent crime and disorder and to protect children from harm are being seriously undermined by the Premises Licence holder engaging in the sale of illicit tobacco from the premises.

On 14 September 2016 Warwickshire County Council Trading Standards Officers conducted an advice visit to the premises after receiving intelligence that illicit tobacco was being sold at the premises. The intelligence received was deemed to be very reliable. On arrival at the premises officers spoke to Mr Hasan Azizi, who identified himself as the owner of the business, he said that he had just taken over the business and he had moved to the area after purchasing the shop, Mr Azizi provided a copy of his personal licence. Mr Azizi was advised that the possession and or sale of illicit tobacco was forbidden and that his alcohol licence could be at risk if he was found selling illicit tobacco. He was advised to ensure he only purchased tobacco from legitimate cash and carry outlets; the health risks associated with counterfeit and illicit tobacco was drawn to his attention and the steps he should take to avoid underage sales.

On 8 December 2016 acting on intelligence reports officers from Warwickshire Trading Standards Service and Warwickshire Policy conducted an inspection of the premises with the aid of tobacco sniffer dog. During the visit Mr Azizi was present. During the visit a concealment was located within the stock room of the shop. The concealment was very sophisticated, as it used a number of electro magnets which were operated by a key fob release mechanism.

(Photographs of the concealment were submitted following consent from Ms Clarke)

Mr Kacha explained the photographs

Page 1 – Shop front

Page 2 – Rear of shop, entrance to stock room and next floor showing alcohol on show

Page 3 – Stairs, second area stockroom, dog indicating smell of tobacco wall behind the panel

Page 4 – dog continuing to indicate

Page 5 – close up image of dog and small hole with release mechanism with finger push, see blemish area on the wood and area chiselled for release mechanism, light behind. Officers tried to open door and had to shut off the power which resulted in the door swinging open.

Page 6 – dog indicating tobacco found

Page 7 - two electro magnets holding door in place

Page 8 shows how electro magnets had been wired

Page 9 – tobacco taken out and image shows potpourri and garlic to throw the dogs off the scent

Page 10 – light on electro magnets

Page 11 – image of a packet of cigarettes found on the counter which were similar to the non- legal packets found in the concealment

Page 12 – image of total seizure 20640 cigarettes. The seizure comprised two parts 10690 counterfeit cigarettes in Polish language packs and the rest foreign/non duty paid.

The concealment was made to look like the surrounding shop fittings. Upon opening the door it was obvious that items had been placed to misdirect the tobacco detection dog, the items included fresh peeled garlic and potpourri. The total number of items seized were 20640 cigarettes. How these items were stored is in contrast to how legitimate tobacco is stored in the gantry behind the shop counter.

A vehicle belong to Mr Azizi was also searched. Paperwork related to a shop in Norwich was found, the premises in Norwich are suspected to be linked to the sale of illicit tobacco.

During the investigation Mr Azizi was asked to provide the passcode for the CCTV unit that was seized from his premises. Mr Azizi stated to officers that he did not know what the code was and said he was unable to assist officers. The Premises Licence has a condition requiring CCTV recordings to be downloadable on request and training to be given to staff on usage of the CCTV system.

Warwickshire Trading Standards service had samples of the tobacco analysed and it was now been confirmed as counterfeit and illicit. A criminal investigation continues.

On 18 January 2017, Warwickshire Trading Standards Service received a complaint from a member of the public relating to sale of tobacco from the premises, the complaint also referred to the sale of tobacco to underage children.

Under the Licensing Act 2003 the premises are required to take steps to promote the four licencing objectives. It is the opinion of this service that the licensing objectives to prevent crime and disorder and to protect children from harm are being seriously undermined by the incidents described. Furthermore the Premises Licence holder Mr Azizi has been obstructive towards the Trading Standards investigation by not assisting with access to his CCTV sytem.

The Premises Licence holder Mr Azizi made an application to be DPS but this was refused at a licensing hearing on 1 March 2017. During this hearing Mr Azizi stated he was not aware of the illegal cigarettes found on 8 December 2016 and they must have been left there by a previous owner (that is 3 months earlier). The current DPS is Mr Asso Hemn Hassan who was the previous owner of the premises. (Further details will be provided by Sgt Powell)

Illicit tobacco is a crime which deprives the UK of £2 billion every year; money which could be used to fund essential public services; including tackling the damaging impacts of tobacco itself. This illicit tobacco trade damages legitimate business. Trading Standards has received complaints from local business about this criminal activity and the effect it is having on their ability to compete as a consequence.

The illicit tobacco trade also undermines public health tobacco control strategies and facilitates the supply of tobacco to young people. The price at which these tobacco products are being sold (as little as £3.50 a packet) makes them very affordable and this illegal trade encourages children and young people to smoke. A survey by Trading Standards North West showed that as it becomes harder for the under 18s to buy from legitimate traders, they are increasingly turning to illicit sources.

It is the view of this Service (as a Responsible Authority) that the business is not being run in a fit and proper manner by Mr Azizi and the nature of the reported incidents would allow the only remedy to be the revocation of the Premises Licence.

Reference to Home Office Guidance issued under Section 182 of the Licensing Act 2003.

Warwickshire Trading Standards is currently conducting a criminal investigation where the burden of proof is higher, today you are looking on the balance of probabilities.

6. **Summary of Questions to Applicant**

The garlic looked fresh but was not analysed

On 12 January 2017 Mr Azizi was asked for the code and gave two numbers 0000 or 1234 but neither worked so CCTV footage not seen

Mr Azizi was present at the inspection

The fob was not found

Criminal investigation is ongoing

Mr Azizi owns the shop

2 CCTV systems were seized with the cigarettes

Delay in asking for the code to the CCTV systems was due partly to Christmas and the prioritisation of resources in relation to the number of resource priorities.

Trading Standards Officers confirmed that they believed that Mr Aziz had been somewhat obstructive in relation to the provision of the CCTV passcode

7. **Outline of Responsible Authorities' Case**

Warwickshire Police:

Warwickshire Police were concerned with the breach of two of the Licensing objectives; prevention of crime and disorder and preventing children from harm.

On 25 January 2017 Sgt Powell and an Officer from the Council's Licensing Section attended the premises and met Mr Azizi. A full licensing inspection was conducted during which a number of breaches of licensing conditions were found:

- a) No DPS in place, Mr Hassan named on Licence, Mr Azizi Premises Licence Holder. Mr Azizi confirmed that Mr Hassan had not been involved in the premises since September.
At the last hearing on 1 March 2017 Mr Azizi intimated that Mr Hassan had been involved so there was confusion who was the DS
- b) No external CCTV as stated on the Licence
- c) On viewing the internal CCTV images it became clear that the CCTV

camera was not positioned to capture images satisfying the requirement of enabling facial recognition

- d) Alcohol was on display with non- alcoholic children's party drinks *Photos submitted following agreement by June Clarke)*
- e) No refusal or incident book available at the inspection
- f) No training records – one staff member present at the inspection

At the hearing in March Mr Azizi stated he was unaware of illegal cigarettes and must have been the previous owner Mr Hassan. However, the first person Mr Azizi phoned following the hearing was Mr Hassan who has subsequently been the DPS since 1 March.

On 20 March 2017 Mr Hassan removed himself from being the DPS on the premises licence, however, despite Mr Azizi's proposition that the cigarettes were planted by the previous owner, the aforementioned collaboration demonstrates Mr Azizi to be complicit with the previous owner Mr Hassan.

8. **Summary of Questions to Responsible Authorities**

Mr Azizi was not interviewed by the Police due the investigation being the action of Trading Standards

There have been at least two previous owners

Mr Hassan was not appointed DPS by Mr Azizi, however his failed application to appoint himself led to the DPS appointment automatically reverting to the previous DPS, Mr Asso Hassan

Ongoing criminal investigation

Mr Asso Hassan was the DPS on 25 January 2017

Not aware training records have been provided

9. **Outline of Responsible Authority**

Warwickshire Children's Services

Mr Jaques confirmed to the Sub-Committee that, as a responsible authority concerned with the protection of children from harm, a representative of the Child Protection Services supports the application to review the licence based on the concerns of the other authorities investigating offences at the premises.

From the information available there are concerns about the way the premises are managed.

Children's Services support Trading Standards representation and consider the appropriate action is that the premises licence should be revoked.

Mr Azizi holds a personal licence so would have been trained on sale alcohol and has directly contravened training in the way it has been sold.

Various licence conditions have been breached.

Mr Azizi appears to have failed to co-operate with the authorities in respect of the provision of the CCTV code.

Cigarettes were found on the premises

Based on the evidence presented, Child Protection Services considers that the licence should be revoked.

10. **Outline of Responsible Authority**

Licensing Authority

25 January 2017 Sgt Powell and Penny Clarke, Licensing Officer, carried out a routine inspection of the premises to establish the level of compliance with the premises licence and the licence conditions and identify what, if any, support was needed.

The licensing authority was duty-bound to carry out an inspection as concerns about the premises had come to light following receipt of intelligence from other responsible authorities in a multi-agency initiative meeting.

During the inspection Mrs Clarke asked to speak to DPS named on the Premises Licence Mr Asso Hussan and was advised by Mr Azizi that he had left in September. The role of the DPS is to authorise and take responsibility for overseeing the sales of alcohol from the premises, ensuring compliance with the legislation and the premises licence conditions.

Mr Azizi had a personal licence and he was advised to apply to vary the premises licence to be DPS as Mr Hassan no longer had day to day control of the sales of alcohol.

The CCTV both internal and external should be to the specification of the local Police and images retained for 30 days, downloaded on request and recorded at all times, accurate dates and times to be visible on images. The inspection revealed no external CCTV, no CCTV to cover facial recognition as images shown at the time were not able to identify faces. A discussion took place with Mr Azizi to help him rectify the breach.

Recorded CCTV footage was only available from 16.30 on 8 January, in contravention of a condition. Mr Azizi said HMRC had removed it the CCTV system, however we believe this to have been removed by Trading Standards

A request was made for CCTV footage for 8 and 12 January Mr Azizi was only able to provide images from one camera. He was asked to provide that footage again on 1 March but was unable to do so.

Despite the guidance and advice provided, Mr Azizi has failed to comply with the condition in relation to CCTV, storage of CCTV, the provision and recording of staff training, including 6 monthly refresher training and any changes under the Licensing Act 2003, and the maintenance of training records on site for inspection at any time.

Whilst DPS on the Licence is Mr Hussan he has not been on site since September so clearly not be carrying out weekly checks of the refusals log book.

Mr Azizi said his accountants had the training records

Self-imposed condition regarding being vigilant in relating to litter in the operating schedule on the original licence – Mr Azizi said Council clean outside.

Found alcohol displayed alongside non—alcoholic children’s party drinks referred to previous photos – Mr Azizi was alerted to the breach and given advice.

Proof of age, challenge 21 should be fully maintained and signed off weekly by DPS. The DPS had not been into the shop since September and Mr Azizi again clarified that the hearing on 1 March.

Following inspection Mr Azizi submitted an application to appoint himself as on the same day, 25 January 2017.

The Council’s Licensing Officer has spoken to Mr Azizi numerous times to try provide support and work with him particularly in relation to position for CCTV.

It is customary for a follow up visit to be conducted where compliance issues have been identified and a second visit was made on 13 March 2017 – there were improvements however still issues with CCTV in particular with the time not being displayed on images, the system not retaining CCTV images for 30 days and although one external camera had been provided to the front of the premises, none covered the rear.

Concerned Mr Azizi advised only one member of staff Sylvia, however on 13 March he had a second member of staff called Monica – training records only existed for Sylvia. Monica was not the holder of a personal licence, which raised the question as to whether Monica had any authorisation to make sales of alcohol.

The refusal logs were not being signed by DPS at the time of the second visit.

Immediately after the hearing on 1 March when Mr Azizi’s application to appoint himself as DPS was refused, Mr Azizi contacted Mr Hussan by telephone and asked him to remain as DPS as it automatically reverted back to him. Mr Hussan confirmed he would be willing to continue for a short period to allow Mr Azizi time to rectify the matter by finding a new DPS.

On 20 March 2017 Mr Hussan contacted the Council to remove himself as DPS

Mr Azizi still not complying with all conditions six months after taking over the premises licence despite ongoing assistance.

11.

Summary of Questions

Mr Azizi is using refusal book

Premises licence Plan is attached to the Licence

Officers did discuss plan with Mr Azizi

Any personal licence holder can delegate their authority to another person to makes sales of alcohol on their behalf, such authorisation is not required in writing. Monica's authorisation to makes sales of alcohol would be under Mr Azizi's authorisation.

Mr Hussan agreed to be DPS in the phone call on 1 March

Mr Hussan met Council's Licensing Officer on 2 March he stated he was going to the premises to sort it out

Mr Azizi has complied with more of the conditions but not in relation to the training and maintenance of records

Community Safety Warden had bodycam at the last visit, accompanied Mrs Clarke as support in relation to her health issues

Mrs Clarke confirmed there had been several transfers of the premiss licence and DPS since 2015

Mrs Clarke was unable to comment on the frequency of licensing check conducting by the Licensing Authority at the premises since the grant of the premises licence in 2015.

12.

Outline by Premises Holder Representative

June Clarke on behalf of the Mr Azizi stated that it was a very convoluted matter. The main crux are the cigarettes and breach of conditions are added from other authorities taking the opportunity to "jump on the band wagon".

Regarding the illegal cigarettes there is no conclusive evidence presented to Sub-Committee that Mr Azizi either knew they were hidden on the premises or that he was selling them.

Inspections of the premises have been done on several occasions since he took over the business in September; there has been ample opportunity to look for cigarettes in the shop, the flat above the shop and his car and none were found apart from in the wall.

Mrs Clarke stated that Mr Azizi was not aware of the cigarettes being hidden in the wall and used the analogy of a person who might buy a house with a body buried in the garden. The Policy may well visit you on the basis of intelligence received and find a body in the garden, however, if you did not own the premises at the time it was buried and did not know it was there then you are guilty of no crime.

Mr Azizi did not know the cigarettes were hidden in the wall and there is no evidence to suggest that he did. Referred to Section 144(2) of the Licensing Act 2003 states a person commits an offence if a person knowingly keeps or allows to be kept, on any relevant premises, any goods which have been

imported without payment of duty, or which have otherwise been unlawfully imported.

There has been no mens rea. No evidence to show that in this case.

Was a search made for the fob? No fob was found. Mr Azizi had no means of activating the release to access the cigarettes.

In her experience as Licensing Consultant for many years if a person was dealing in illicit goods smaller quantities would have been hidden in places that afforded easy access i.e. in the ceiling, behind the counters, in the flat, in the car etc.

Ms Clarke suggested that the findings indicated that the premises had not been visited in three years, failure to have external CCTV cameras had not been identified before the visit on 25 January 2017. Previous compliance checks would have identified it earlier.

Mr Azizi had not seen the plan to the Licence, first time was in March 2017.

She conceded that Mr Azizi had breached the licence conditions in various ways and he should have sought help earlier. Most serious breach related to the CCTV camera failings, which he accepts responsibility for and will rectify.

However not 100% his fault as the plan was not provided with the licence and he did not fully appreciate his responsibilities as DPO. He wants to be DPS and wants to run a compliant business and has not appointed Ms Clarke to work with him to assist him in achieving a high level of compliance.

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Why were the premises not searched again
Mr Azizi has not sold alcohol or cigarettes to children
Confirmed that Mr Asso Hussan had been DPS on Licence but was not supervising the activities on the premises

Clarified that there is not a requirement to record ID but is required to record refusals of sales of alcohol.

Took Trading Standards 6 weeks to ask for the access code to the CCTV system after it had been seized, the inference being drawn that the authorities were not treating the matter as high priority.

No direct evidence to link Mr Azizi

No cigarettes currently being sold

Mr Azizi was unaware of the licence conditions and had not seen the plan

Course books do not mention conditions but accepts did not comply with the conditions and it is commendable the support Officers have given him.
Case is based on "opinion" refer to Thwaites case, your decision cannot be based on opinion only fact.

Mr Azizi did not have the tools to help him.

No visits until Mr Azizi turned up

Fact Trading Standards turned up with dogs must have known

13.

Summary of Questions

Licence Holder responsibility to be aware of the conditions in place

Cigarette packet under the counter was Mr Azizi's own

Trading Standards inspections are target led on intelligence received

Mr Azizi stopped selling cigarettes after the raid, bought from cash and carry

Mr Azizi obtained the code given to Trading Standards from Mr Hussan

Mr Azizi can access/monitor the CCTV and download via his phone so had not needed the code prior to being asked by Trading Standards.

He was not asked to provide anything other than the code

The Council have not received the CCTV footage requested, Mr Azizi stated he sent it by email

Mr Azizi has known Mr Hussan for a couple of years as he worked for a friend.

Mr Azizi was intending to buy the premises at Norwich but did not go ahead

In January Mr Hussan was the DPS and Mr Azizi the owner

Mr Hussan was around, lived upstairs in the flat for two months

Stopped selling cigarettes after Christmas when his supplies ran out.

Will start selling again soon.

Has had training for personal licence

14.

Summing Up

Representative for Mr Azizi

Various options, serious to revoke cigarettes no connection to Mr Azizi except in the same building.

He did not know they were there, no fob was found

Holds his hands up to not complying with the Licensing Conditions

Not seen the plan

If minded to amend conditions happy to work with the Council and I will work with Mr Azizi to support him in providing training records

First shop, wrong to dive on him for something not his fault and for which there is no evidence against him

Decision cannot be based on opinion

15. **Decision**

Many thanks to all the parties for attendance. Sub-Committee have listened carefully to the presentations.

We are disappointed that Mr Azizi has consistently failed to comply with the conditions on his Licence, which was wholly his responsibility.

However you are working with offices and have finally sought advice and hope this will continue.

Members are mindful that there is an ongoing criminal investigation in regard to the counterfeit and illegal cigarettes.

At this time we are not going to revoke your licence. If following the conclusion of the investigation should you be convicted then there will be a further review of your licence.

Take this matter as a very severe warning and it is in your interests to work closely with the authorities.

16. **Reason**

In coming to this decision the Sub-Committee gave regard to the representations of the applicant, the Responsible Authorities and the premises Licence Holder's representative.