

MINUTES of the meeting of Regulatory Sub Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday 19 October 2011 at 10.00 am

Present: Councillor JW Hope MBE (Chairman)

Councillors: PL Bettington and Brig P Jones CBE

57. ELECTION OF CHAIRMAN

Councillor JW Hope MBE was elected as Chairman for the Regulatory Sub-Committee hearing.

58. APOLOGIES FOR ABSENCE

No apologies for absence were received.

59. NAMED SUBSTITUTES (IF ANY)

There were no substitutes present at the hearing.

60. DECLARATIONS OF INTEREST

There were no declarations of interest made.

61. EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

62. APPLICATION FOR A FULL REVIEW OF A PREMISES LICENCE FOLLOWING AN EXPEDITED REVIEW 'NATALKA POLSKIE, 22 EIGN STREET, HEREFORD, HR4 0AB.'
(Pages 1 - 2)

The Regulatory Sub-Committee was convened in order to determine an application for a full review of a premises licence following an expedited review. The expedited review had been applied for by West Mercia Police based on the licensing objectives regarding the prevention of crime and disorder.

The Chairman introduced the Members and Officers and asked any interested parties to introduce themselves.

Mr Phillips, the Premises Licence Holder's legal advisor, requested a brief adjournment as he had been served additional papers via email at 8:40 am. The Chairman adjourned the meeting until 9:30 am.

When the meeting was reconvened the Chairman advised all parties of the procedure the Council followed in respect of premises licence reviews. Mr Phillips requested an extension to the usual 10 minutes allocated to all parties for addressing the Sub-Committee. The extension was granted.

In response to a question regarding the submission presented to the Sub-Committee, Mr Phillips confirmed that his representation was not against the interim steps and that the opening paragraph of his submission had been duplicated from an earlier meeting. He confirmed that his submission related to the full review of the premises licence. He added that he would also be requesting that the interim steps applied on 29 September be lifted.

The Licensing Officer presented the report. In reference to Mr Phillips' comments regarding the interim steps he asked for clarification from Mr Phillips as to where the legislation allowed the interim steps to be lifted. Mr Phillips advised that although it was not specifically provided in the legislation the High Court had ruled in previous cases that the interim steps could be lifted.

In accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Inspector Nick Sempler, representing West Mercia Police who had applied for the review, addressed the sub-committee. He advised the Sub-Committee that the application for an expedited review was based on the sale of contraband goods which amounted to serious financial gain. It was also noted that the amount of cash seized at the premises was considerably less than initially claimed, he apologised for this error but stated that the initial figure was given in good faith based on an email from the officer who was dealing with the police investigation.

All parties were given the opportunity to question Inspector Sempler. A number of questions were asked by Mr Phillips relating to the discrepancy in the cash amount seized at the premises; whether there was any evidence to suggest any of the vodka had been sold; whether there was any evidence to suggest any contraband tobacco had been sold and whether or not Mr Staliglowa had refused to attend the store when telephoned by his employee. Some of these questions were answered by Inspector Sempler and others were answered by Mr Mooney, West Mercia Police's Licensing Officer.

During the questioning the issue of whether or not Mr Staliglowa had refused to attend the store was raised. To help clarify the situation the Sub-Committee requested that Adam Michniok attend the hearing. Mr Michniok was a Community Support Officer who had been requested to assist with translation when the warrant was served on the store. He confirmed that the member of staff who was present when the warrant was served had asked if she could contact Mr Staliglowa, she phoned him and he said that he would not attend the store. In response to a question from Mr Phillips, Mr Michniok confirmed that there had not been a request from the Police or HMRC for Mr Staliglowa to attend the store.

In accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Mr Phillips, the premise licence holder's legal advisor, addressed the sub-committee. He asked Mr Staliglowa to read through his written statement. Mr Staliglowa gave a detailed background to his business interests and the history of his involvement with the store. He went on to give a detailed account of his movements on the day the warrant was served.

Mr Phillips requested that the interim steps be immediately withdrawn and that the only possible action to take would be the addition of a condition requesting that Mr Staliglowa agree to improve the CCTV system at the store to allow recording to be kept for a period of 30 days.

The Licensing Officer had concerns in respect of the interim steps being lifted immediately as in his opinion this was contrary to paragraph 6.2 of the DCMS guidance.

The Sub-Committee retired to make their decision, the Council's Legal Advisor and the Democratic Services Officer also retired to assist them with legal and procedural matters.

At the conclusion of the meeting the Council's Legal Advisor notified all parties of the decision of the Sub-Committee. He confirmed that they had decided to restore the premises licence subject to two new conditions. He added that the Committee had considered carefully the Home Office guidance dated October 2010 and in particular paragraph 11.23 and those parts immediately following and that the reasoning therein contained was instrumental in it reaching its decision.

The Committee noted that other proceedings were ongoing but was clear that its decision must be based on the evidence heard before it.

RESOLVED

THAT the premises licence in respect of Nataalka Polskie, 22 Eign Street, Hereford, HR4 0AB, be restored and that the interim steps put in place by the Sub-Committee on 29 September 2011 be lifted with immediate effect. The Sub-Committee also requests that the following conditions be attached to the licence forthwith:

- 1 CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition.**

Cameras shall encompass all ingress and egress to the premises, fire exits, outside areas, and all areas where the sale/ supply of alcohol occurs.

Equipment MUST be maintained in good working order , be correctly time and date stamped , recordings MUST be kept in date order, numbered sequentially and kept for a period of 30 days and handed to Police on demand.

The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand.

The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained endorsed by

signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded.

In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number 0300 333 3000 immediately.

- 2 Alcohol for off sales to be purchased by the Designated Premises Supervisor or by someone specifically authorised by him in writing, appropriate records to be kept.**

63. REVIEW OF A DECISION OF THE TAXI & COUNTY TRANSPORT BADGE OFFICER PANEL (Pages 3 - 4)

The Sub-Committee considered the above appeal, which had gone before the Taxi and County Transport Badge Officer Panel on 28 September 2011.

As a preliminary point the appellant expressed concerns in respect of the data that had been supplied to the Council as part of the CRB process. He disputed one of the offences. He was advised to contact the Criminal Records Bureau directly to address the situation.

The Licensing Officer presented the report and outlined the key issues that had given rise to the driver receiving 8 penalty points for 3 separate offences.

Prior to making their decision the Members heard from the appellant who held a Dual (Hackney Carriage and Private Hire) licence. He confirmed that he wished to appeal against the following decisions:

- 19 August 2011 – 3 penalty points – Parking on a loading bay
- 19 August 2011 – 2 penalty points – Failure to maintain a reasonable standard of behaviour
- 27 August 2011 – 3 penalty points – Parking on double yellow lines

The appellant gave his account of the events which had resulted in him receiving a total of 5 penalty points on the 19 August 2011. He drew Members' attention to the two letters which were contained within the agenda pack, he also submitted a further two letters to the Sub-Committee supporting his statement that he was waiting to pick up a pre-booked client on the 19 August.

Inspector Nick Sempler, who was attending the meeting on behalf of West Mercia Police, advised the appellant that it had been brought to the Police's attention that he had been soliciting fellow taxi drivers to submit letters in support of his appeal. He confirmed that this information had come from a person of good standing in the community who could be treated as a reliable source.

Having carefully considered those matters brought before them, the Sub-Committee were of the opinion that the appeal should be dismissed as they did not feel that there was suitable evidence to overturn the decision of the Officer panel. They also had concerns in respect of the validity of the witness statements produced by the appellant.

RESOLVED

THAT the appeal be dismissed and the original decision of the Taxi and County Transport Badge Officer Panel be upheld.

HEREFORDSHIRE COUNCIL
**REGULATORY COMMITTEE DECISION NOTICE
(THE LICENSING ACT 2003)**

PREMISES	Natalka Polskie Deliktsey
PREMISES LICENCE HOLDER	Mr Robert Stuliglowa
APPLICANT'S NAME	West Mercia Police
APPLICATION TYPE	Full Review following an Expedited Review
PANEL MEMBERS	Councillor JW Hope MBE (Chairman) Councillor RC Hunt Councillor Brig P Jones CBE
DATE OF MEETING	19 October 2011

Members of the Licensing Panel of the Council's Regulatory Committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Prior to making their decision the Members heard from Robert Stuliglowa and Jeremy Phillips, the Premises Licence Holder and his legal representative as well as Inspector Nick Simpler and James Mooney, representing West Mercia Police.

Having carefully considered those matters brought before them and in reaching their decision, the Members had full regard to both the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) and the Council's Licensing Policy. The Members made the following decisions in order to promote the licensing objective of the prevention of crime and disorder.

DECISION

- 1 It is the decision of the Committee that the premises licence in respect of Natalka Polskie Deliktsey be restored forthwith.
- 2 The Committee also decided that the interim steps previously ordered be lifted, also with immediate effect.
- 3 The Committee requests that 2 additional conditions be attached to the licence in order to promote the licensing objective of the prevention of crime and disorder.

CONDITIONS

- 1 CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition.

HEREFORDSHIRE COUNCIL**REGULATORY COMMITTEE DECISION NOTICE
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Cameras shall encompass all ingress and egress to the premises, fire exits, outside areas, and all areas where the sale/ supply of alcohol occurs.

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The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand.

The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded.

In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number 0300 333 3000 immediately.

- 2 Alcohol for off sales to be purchased by the Designated Premises Supervisor or by someone specifically authorised by him in writing, appropriate records to be kept.

REASON

- 1 The Committee has considered carefully the Home Office guidance dated October 2010 and in particular paragraph 11.23 and those parts immediately following. The reasoning therein contained was instrumental in it reaching its decision. The Committee noted that other proceedings were ongoing but was clear that its decision must be based on the evidence heard before it.

APPEAL INFORMATION

Under Schedule 5 Paragraph 8, the applicant or any party making representation may appeal against the decision. Section 9 states that such an appeal must be made to the Magistrates Court within a period of 21 days from the date that the applicant is notified in writing of the decision.

Should you wish to appeal this decision then it is recommended that you obtain your own legal advice or contact the Magistrates Court at Bath Street, Hereford.

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