

**BOROUGH OF KETTERING**

**LICENSING COMMITTEE**

**Meeting held – 14<sup>th</sup> May 2018**

**Present:** Councillor Lloyd Bunday (Chair)  
Councillor Ian Jelley  
Councillor David Soans

**Also Present** Stuart Evans (Legal Advisor)  
Jo Betts (Environmental Health Officer)  
Ciaran Corkerry (Environmental Protection Officer)  
Bill Field (Public Services Warden Team Leader)  
Nick Lenton (Trading Standards)  
PC Dave Bryan (Police)

Jamal Khalil (Legal Representative for Mr Sarhad Salari)

**17.LC. APOLOGIES**

Apologies were received from Cllr Anne Lee. It was noted that Cllr David Soans was acting as substitute. Apologies were also received from Russ Howell (Health Services Manager).

**17.LC. MATTERS OF URGENCY**

None

**17.LC. DECLARATIONS OF INTEREST**

None

**17.LC. TO DETERMINE A NEW APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR FRESH POL, 35-41 MONTAGU STREET, KETTERING**

A report was submitted which sought the Committee's decision in relation to a review of the premises licence for Fresh Pol, 35-41 Montagu Street, Kettering.

PC Bryan stated that he had requested the review of the premises licence for FreshPol in relation to the licencing objective regarding

the “Prevention of crime and disorder”.

A history of incidents relating to the storage and sale of smuggled and illicit tobacco products was provided to the meeting, spanning a period from September 2016 to the latest incident on 6<sup>th</sup> February 2018.

Initially, a failed Test Purchase undertaken by Trading Standards in September 2016 had resulted in the issuing of a warning notice to the business owner. Two further complaints regarding the sale of illegal tobacco products at the premises were received by Trading Standards in February and May 2017.

Trading Standards were informed of another failed Test Purchase undertaken by an independent organisation on behalf of one of the major tobacco companies, whereby four packets of illegal foreign labelled and counterfeit cigarettes were purchased. A further letter was issued to the business owner by Trading Standards as a result of this incident.

On 8<sup>th</sup> November 2017 Trading Standards and officers from Her Majesty’s Revenue and Customs carried out an inspection of the premises and discovered 3191 packets of illegal cigarettes (some 2500 of these being counterfeit) and 75 pouches of illegal hand rolling tobacco. A quantity of alcohol had also been seized as relevant purchase invoices could not be provided.

On 1<sup>st</sup> December 2017 a further inspection occurred with officers from KBC, Trading Standards and Northamptonshire police being present. No illegal products were located, although a number of customers were heard to ask for tobacco products, including one individual who requested a packet of cigarettes and when offered the ones from the display gantry asked for “the ones from out the back” indicating toward the rear of the premises.

Another Test Purchase took place on 26<sup>th</sup> December 2017, with a packet of illegal cigarettes being sold. A further failed Test Purchase took place on 4<sup>th</sup> February 2018.

On 6<sup>th</sup> February 2018 the premises was visited by officers from KBC, Trading Standards and Northamptonshire police, including a tobacco detection dog. The premises were searched and the discovery of 629 packets of illegal cigarettes and 3 pouches of illegal hand rolling tobacco was made in an adjacent warehouse leading from the premises. The warehouse was linked to the premises by a self-made pipe which led from a store room in Fresh Pol to the warehouse above the store. In addition a concealed room was discovered containing a large quantity of alcohol which was seized due to the inability of business staff to provide relevant purchase invoices.

During the search, officers were alerted to individuals on the roof of the warehouse throwing boxes of cigarettes down to a waiting vehicle below. This vehicle sped off when officers made their way to its location. Further investigations saw additional cigarettes concealed on the roof of the building.

Colour photographs of the concealed room, the alleged delivery pipe and seized alcohol were supplied to the meeting.

Nick Lenton from Trading Standards confirmed that following an initial complaint regarding the sale of illegal tobacco, a visit would be made to the store in question where the proprietor would be reminded of the need to comply with applicable laws, any illegal products would be seized and a receipt issued. Trading of the business would then be monitored. If further reports were received, additional advice designed to achieve licence compliance would be provided.

A history of the ownership and operation of the store was supplied to the meeting, which noted a number of changes of business directorship. The initial licence applicant had been a Mr Adam Branecki, with the licence then amended to Fresh Pol Supermarkets Ltd in December 2016. Companies House indicated that a Mr Sarhad "Sammy" Salari had been the sole director of the company effective from 3<sup>rd</sup> April 2018, with evidence produced to indicate that he had been involved in illicit tobacco offences elsewhere as recently as 2017, receiving a suspended six month prison term. Mr Salari had previously resigned as a director of the company in October 2017 having been appointed in December 2016.

A visit to the premises in February 2018 found a certificate of incorporation on display in the name of World Food Groceries Ltd, the sole director of which was a Mr Makwan Mohamed Shekha. Mr Shekha was interviewed by Trading Standards in relation to his involvement with Fresh Pol showing no knowledge of the ownership, operation, staffing, rental agreements or profits of the business. He had stated that he had left the operation of the business to Mr Salari. It was the opinion of Trading Standards that Mr Shekha's name had been put forward to dilute the history of those individuals genuinely involved in the business.

It was heard that shortly after review papers had been served on the business, an application had been made to transfer both the premises licence and vary the Designated Premises Supervisor (DPS) designation into the name of a Mr Saeyd Qadir. It was noted that the individual witnessed driving away from the business with a vehicle full of cigarettes during the inspection on 6<sup>th</sup> February was Mr Saeyd Qadir. This application was withdrawn following PC Bryan advising the business that he planned to object to the transfer. The meeting had received evidence of

invoices that indicated that Mr Qadir had been closely involved with the business well before he attempted to transfer the premises licence and DPS designation.

It was heard that Mr Salari was no longer a director of Fresh Pol Supermarkets Ltd with effect from 8<sup>th</sup> May 2018; electronically submitted documents again showed that Mr Shekha was the sole director.

PC Bryan stated that it was the assertion of the police that the premises was involved with smuggled and illicit goods under various guises and through the involvement of various individuals associated with the premises. It was clear that the licencing objective regarding the "Prevention of crime and disorder" was not being promoted by the business.

The Committee asked a number of questions to determine whether cigarettes found on the roof of the premises during the 6<sup>th</sup> February inspection were illegal and whether alcohol had been discovered in a deliberately concealed room on the premises.

Mr Salari's legal representative, Mr Khalil was provided with the opportunity to ask questions of police and Trading Standards representatives.

A query was raised regarding the delivery of review paperwork, however it was confirmed that there was only a duty to serve papers on the premises themselves.

A further query was raised in regard to the current DPS for the premises. Although there was a named individual on the current premises licence, the individual concerned was uncontactable and there appeared to be little knowledge of his whereabouts. It was confirmed that the onus was on the business to keep DPS details up to date.

It was confirmed that Trading Standards had been the sole authority involved in investigations prior to November 2017.

Mr Khalil questioned whether PC Bryan had had previous dealings with Mr Qadir to enable recognition of him on 6<sup>th</sup> February. PC Bryan confirmed that Nick Lenton of Trading Standards had shown him a picture of Mr Qadir without a name and PC Bryan had indicated this was the individual seen leaving the premises with a car full of cigarettes suspected to be illegal. This man was later identified as Mr Saeyd Qadir.

Mr Khalil apologised for Mr Salari's absence from proceedings, noting he had a pre-booked journey abroad and had only recently been made aware of the review proceedings.

Mr Khalil advised the Committee that Mr Salari's involvement with the business only extended to the periods that he had been a Fresh Pol Ltd company director and a person with significant control. He then confirmed that although currently Mr Salari was not a named director for the business, he still retained a level of involvement.

Mr Khalil stated that upon purchasing the business in December 2016, Mr Salari had received letters regarding the sale of illegal tobacco at the premises. In February 2017, Mr Salari and other unnamed individuals had purchased the freehold of the premises under the name Action House Ltd. It was given that the reason he terminated his involvement in the business in October 2017 was as a result of receiving warning notice letters regarding the sale of illegal tobacco at the premises. Given that Mr Salari had been the defendant in criminal proceedings of a similar nature elsewhere in the country, he had not wanted anything further to do with the business.

It was stated that Mr Shekha had then taken over the business in October 2017, with Mr Salari again assuming control of the business on 8<sup>th</sup> February 2018 and removing Mr Shekha from the business two days after the 6<sup>th</sup> February search. The reason was provided that Mr Salari became aware of activities involving illegal tobacco and did not wish to be associated with such activity.

Mr Sheka had, on 8<sup>th</sup> May 2018, again assumed directorship of the company to clear outstanding debts that the company had as Mr Salari was only prepared to take over the business if it were debt free.

The Committee stated that the review application before them was to consider the premises licence for Fresh Pol and that ownership of the business was arguably irrelevant to the review.

PC Bryan provided closing remarks noting that there was sufficient evidence before the Committee to show that the premises had been involved in the sale of illicit tobacco, offences that were viewed very seriously under the Licensing Act.

Mr Khalil provided a summation stating that it was unfortunate that the business had seen a high turnover of ownership and that the premises licence would be better served being in the name of an individual rather than a business. He stated that there was no evidence that anyone had attempted to work with the business operator to achieve compliance; rather relying on the sending of letters.

Mr Khalil reminded the Committee that it had a number of options open to it, not just revocation of the premises licence and the consequences of revocation were outlined to the meeting. Mr

suspended for a period of up to 3 months and a warning provided to Mr Salari. This suspension would provide Mr Salari with the time to rectify any issues within the store.

In addition two additional licence conditions were suggested, the first being that the premises holder be a named individual and not a limited company. The second condition was suggested as being instant loss of premises licence should there be any further failed test purchases.

He concluded by stating that Mr Salari was a man attempting to turn his life around and that this was supported by the documentation supplied.

Following consideration, it was

**RESOLVED** That the Committee has considered the police report, evidence from Trading Standards, Environmental Health Officers and the representative of Mr Salari. The Committee has decided that the premises licence for FreshPol limited be revoked. A detailed statement for refusal will be sent within 5 working days.

*(The committee exercised its delegated powers to act in the matters marked\*)*

*(The meeting started at 2.00pm and ended at 3.58pm)*

Signed.....  
Chair

Djp

**BOROUGH OF KETTERING**  
**LICENSING SUB-COMMITTEE 14 MAY 2018**  
**FRESHPOL 35-41 MONTAGU STREET KETTERING**

1. On the 14 May 2018 Licensing Sub-Committee heard an application for the review of the premises licensed for Freshpol, 35 to 41 Montagu Street, Kettering following representations received from Northamptonshire Police.
2. The decision of the Licensing Sub-Committee was to revoke the premises' licence for Freshpol 35 to 41 Montagu Street Kettering in accordance with paragraph 18.11 of the Kettering Borough Council Statement of Licensing Policy 1 January 2015 to 31 December 2019. The members of the Licensing Sub-Committee in exercising their powers considered that the action taken was both necessary and proportionate to promote the licensing objectives.
3. In reaching this decision, members of Licensing Sub-Committee heard representations from Environmental Protection Kettering Borough Council, Northamptonshire Police, Northamptonshire Trading Standards and the representative of the owner of Freshpol. It was noted that the owner was out of the country on holiday and as a consequence could not be present at the hearing.
4. The members of Licensing Sub-Committee considered the following paragraphs of the revised guidance issued under Section 182 of the Licensing Act 2003; particularly paragraphs 11.24, 11.25, 11.26 and gave particular weight to paragraph 11.27, "for the sale or storage of smuggled tobacco" and also to paragraph 11.2.8. the members also took into consideration the Kettering Borough Council Statement of Licensing Policy particularly Section 18 Reviews.
5. The members of Licencing Sub-Committee gave weight to the evidence provided by Northamptonshire Police and Northamptonshire Trading Standards which supported the application for the review of the licence noting the history of illegal trading of tobacco from 2016 to date. Members of Committee also noted the representations made by the representative for Freshpol but considered the representations were not relevant and did not mitigate in any way the circumstances around the illegal trading of tobacco at the premises.
6. The members of Licensing Sub-Committee noted the representations from Environmental Protection at Kettering Borough Council but considered that in accordance with paragraph 2.31 of the Authority's licensing policy that there were alternative and more appropriate regulatory regimes to deal with the concerns raised.
7. The representatives and owner of Freshpol are reminded that there is a right of appeal against the decision of Licensing Sub-Committee by giving a notice of appeal to the designated officer for the Magistrates Court within a period of 21 days beginning on the day on which the Appellant is notified in writing by the Licensing Authority of the decision which is to be appealed in accordance with the provisions of the Licensing Act 2003.