

NORTH LINCOLNSHIRE COUNCIL

LICENSING (ACTIVITIES) SUB-COMMITTEE

**LICENSING ACT 2003
APPLICATION FOR REVIEW OF A PREMISES LICENCE
SMITHS CONVENIENCE, 84-86 FRODINGHAM ROAD, SCUNTHORPE**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To request that the Sub-Committee determines the application to review the premises licence for Smiths Convenience. A summary of the application is attached as Appendix A to this report and a copy of the application as Appendix B.
- 1.2 The application to review the Licence has been submitted by North Lincolnshire Council Trading Standards. There has been 1 further representation received, which have been deemed relevant. This is detailed in paragraph 4.2. A copy of the representation is attached to this report at Appendix C.

2. BACKGROUND INFORMATION

- 2.1 In accordance with the provisions of the Licensing Act 2003 and the council's scheme of delegation, all applications for the review of a licence must be determined by the Licensing (Activities) Sub-Committee.
- 2.2 When determining the application the Sub-Committee should only consider issues which relate to the four licensing objectives. The licensing objectives are:
- The prevention of Crime and Disorder
 - Public Safety
 - The prevention of a Public Nuisance
 - The protection of Children from Harm
- 2.3 Members of the Sub-Committee must have regard to the statutory guidance issued under section 182 of the Licensing Act 2003, our Statement of Licensing Policy and our Cumulative Impact Policy if appropriate. Members of the Sub-Committee may deviate from the statutory guidance and licensing policies only if they deem that there is good reason to do so. Where Members do deviate from the statutory guidance or policies then full reasons must be provided.

- 2.4 Members of the Sub-Committee should not allow themselves to pre-determine the application or to be prejudiced in favour or opposed to the licence and shall only determine the application having had an opportunity to consider all relevant facts. Members of the Sub-Committee should not hear or decide on any applications for premises licences in their own ward.
- 2.5 Members of the Sub-Committee shall remember that they are acting in a quasi-judicial role in determining the application and shall remain in the room so that they hear all the evidence before determining the application. The determination shall be based on the evidence provided, which is relevant to the licensing objectives.
- 2.6 The options available to the Licensing (Activities) Sub-Committee having considered all the relevant information are as follows:
- To modify the conditions of the licence
 - To exclude a licensable activity from the scope of the licence
 - To remove the designated premises supervisor
 - To suspend the licence for a period not exceeding three months
 - To revoke the licence
- 2.7 Members of the Sub-Committee should be advised that the applicant for the review, the holder of the premises licence or any other person who made relevant representations in relation to the application may appeal to the Magistrates Court within 21 days of the date on which they were notified of the decision.

3. ISSUES FOR CONSIDERATION

- 3.1 The application for review of a premises licence for Smiths Convenience Store was received on 11 April 2016. A copy of the application is attached to the report at Appendix B.
- 3.2 A copy of the application and accompanying documents has been given to the holder of the premises licence and to each responsible authority, by the applicant on the same day as the day on which the application for review was given to the licensing authority.
- 3.3 No further representation has been made.

4. OUTCOMES OF CONSULTATION

- 4.1 An applicant wishing to review a Premises Licence has to serve a copy of the application form and accompanying documents on the premises licence holder and responsible authorities the same day as the Licensing Authority receives its copy.

- 4.2 The other Responsible Authorities and anybody affected by the premises may join the review.
- 4.3 Ward councillors have been made aware of the application.
- 4.4 In relation to this application Humberside Police have joined the review. Their representation is at Appendix C.

5. **OUTCOMES OF MEDIATION**

- 5.1 In accordance with paragraph 22(3) of our Licensing Policy no mediation is carried out on an application for a review.

6. **LICENSING OBJECTIVES & STATUTORY PROVISIONS**

6.1 Prevention of Crime & Disorder

6.1.1 Further information regarding this objective can be found in the Licensing Policy, pages 22-24.

6.1.2 Representations have been received raising concerns with regard to this objective.

6.2 Public Safety

6.2.1 Further information regarding this objective can be found in the Licensing Policy, pages 25-27.

6.2.2 Representations have been received raising concerns with regard to this objective.

6.3 Prevention of Public Nuisance

6.3.1 Further information regarding this objective can be found in the Licensing Policy, pages 28-30.

6.3.2 Representations have not been received raising concerns with regard to this objective.

6.4 Protection of Children from Harm

6.4.1 Further information regarding this objective can be found in the Licensing Policy, pages 31-34.

6.4.2 Representations have not been received raising concerns with regard to this objective.

7. FURTHER INFORMATION & CLARIFICATION

7.1 A location plan is attached to the report as Appendix E.

8. RECOMMENDATIONS

- 8.1 That the Sub-Committee determines the application for review in accordance the Statutory Guidance issued under s183 of the Licensing Act 2003, our Statement of Licensing Policy, the information contained within this report and having had due regard to the applicant, the premises licence holder and the parties/authorised bodies making relevant representations.
- 8.2 That the Sub-Committee determines the application for review in accordance with the options in paragraph 2.6.
- 8.3 That the Sub-Committee provides the reasons for its decision.

DIRECTOR OF PLACES

Civic Centre
Ashby Road
Scunthorpe
North Lincolnshire

Author: Narelle Plowright
Date: 10 May 2016

Background Papers used in the preparation of this report Nil

APPENDIX A

Summary of Application (New)

Name of Premises	Smiths Convenience Store	Type of Application	Review
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Point Number	Detail	Action
1	<p>Grounds for review</p> <p>The Council's Trading Standards department have submitted a review on the grounds on the prevention of crime and disorder and public safety due to illicit tobacco being sold from the premises.</p> <p>The premises were searched using a tobacco sniffer dog following intelligence received from the public. The search discovered a small quantity of illicit tobacco and over £5000 in notes and coins.</p> <p>Intelligence states that sales of illicit tobacco have been made from these premises for a number of years. Previous raids by Trading Standards and HMRC have revealed larger quantities of illicit tobacco.</p>	

Summary of Representations/Conditions Requested (Responsible Authorities)

Point Number	Detail	Action
2	<p>Appendix C – Humberside Police – In support of the review. The representation raises issues on the grounds of the prevention of crime and disorder.</p>	

Summary of Statutory Guidance Issued under s182 of The Licensing Act 2003

Point Number	Detail	Action
3	P77-78, paragraphs 11.16 – 11.23 – Determination of a review	
4	P78-79, paragraphs 11.24 – 11.28 – Reviews in connection with crime	

**Application for the review of a premises licence or club
premises certificate under the Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Andrew WOAD

(Insert name of applicant)

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Smiths Convenience Store 84-86 Frodingham Road	
Post town Scunthorpe	Post code (if known) DN15 7JW

Name of premises licence holder or club holding club premises certificate (if known) Aras Mohammed Mahmoud
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Number of premises licence or club premises certificate (if known) PRM19031

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
 - a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr

Mrs

Miss

Ms

Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal
address if
different from
premises
address

Post town

Post Code

Daytime contact telephone number

E-mail address
(optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Andrew WOAD North Lincolnshire Council Trading Standards Church Square House Scunthorpe DN15 6NL
Telephone number (if any) 01724 297654
E-mail address (optional) andy.woad@northlincs.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please state the ground(s) for review (please read guidance note 1)

On 23 July 2015 Smiths Convenience Store was searched by North Lincolnshire Council Trading Standards using a tobacco sniffer dog as following intelligence about the sale of illicit tobacco from this premises. The raid was planned and based on intelligence recieved from the public.

At the premises was Aras MAHMOUD (the Premises Licence holder) and Sathees VYITHILINGHAM (assistant manager)

The search discovered a small quantity of illicit tobacco and over £5000 in notes and coins. This money was seized by Humberside police under the Proceeds of Crime Act 2002. Mr Mahmoud was given the opportunity to provide evidence of where the money came from but did not contest the case and therefore the Court forfeited the money.

Tobacco seized included a combination of non-duty and illicit whites.

Intelligence indicates that sales of illicit tobacco have been made from these premises for a number of years. Previous raids by Trading Standards and HMRC have revealed larger quantities of illicit tobacco.

As well as the criminal offences for possessing non-duty tobacco, there are serious safety risks associated with illicit tobacco as the manufacture of the products is uncontrolled.

Please provide as much information as possible to support the application
(please read guidance note 2)

See attached statement and documents

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year
2 4 0 9 2 0 1 4

If you have made representations before relating to this premises please state what they were and when you made them

An application for licence review was submitted in September 2014 following a search by North Lincolnshire Council Trading Standards using a tobacco sniffer dog as part of a national operation to clamp down on the sale of illicit tobacco. The raid was planned and based on intelligence received from the public.

At the premises was Soran Rashid (the Premises Licence holder) and Aras Mahmoud (shop assistant). The search discovered large quantities of illicit tobacco.

Tobacco seized included a combination of non-duty, counterfeit and illicit whites.

Intelligence indicates that sales of illicit tobacco have been made from these premises for a number of years. Previous raids by Trading Standards and HMRC (without search dogs) have only revealed small quantities of illicit tobacco.

As well as the criminal offences for possessing counterfeit and non-duty tobacco, there are serious safety risks associated with illicit tobacco as the manufacture of the products is uncontrolled. The Licensing review removed Mr Rashid designated premises supervisor licence.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date 23/03/16

Capacity Applicant

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)
As above

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

SMITHS CONVENIENCE STORE

Premises Licence Review

Trading Standards (TS) are a 'Responsible Authority'

TS have duty to enforce provisions of Trade Marks Act (for counterfeit products); Consumer Protection Act (Tobacco Health Warnings) and assist HMRC (power to seize non-duty paid items)

Background

This review results from an operation undertaken following intelligence received, where a small amount of illicit tobacco (Evidence AW1), was recovered from a secret compartment within the premises of Smiths Convenience Store. Humberside Police seized £5314.50 in cash (bank notes and coins) that was found under the counter.

Aras MAHMOUD recently took over the business after previously working in the shop for about a year.

Previous Convictions

Aras MAHMOUD has a previous conviction in relation to fraudulent evasion of duty in 2012 (Evidence AW2)

Premises Trading Standards History

Aras MAHMOUD is the owner of the business. Sathees VYITHILINGHAM was the assistant manager of the shop.

Mr Mahmoud and Mr Soran RASHID (the previous owner) had lived in the flat above the shop which had access from the shop. The flat is now separated off and Mr Mahmoud lives at 25B Burke Street, Scunthorpe.

Forfeited tobacco

May 2013 (Unknown if Mr Mahmoud was involved with the business)

Visit with Humberside Police - small amount of counterfeit and non duty tobacco found in upstairs flat but argued for personal use so not seized. Nothing found in shop

September 2014 (Mr Mahmoud was working in the shop)

24 packs (480 cigarettes) of counterfeit cigarettes

242 packs (4840 cigarettes) of illicit white cigarettes

711 packs (14220 cigarettes) of non-duty paid cigarettes

All seized by Trading Standards

£8000 cash seized by Humberside Police and forfeited by the Court

July 2015 (AW3A) (Mr Mahmoud was the business owner)

7 packs (140 cigarettes) of non-duty paid cigarettes

2 packs (40 cigarettes) of illicit cigarettes

All seized by Trading Standards and surrendered by Mr Mahmoud.

£5314.50 seized by Humberside Police and forfeited by the Court

Licence Review

TS submission is that the regular supply of illicit tobacco from the premises undermines the following Licensing Objective(s):

Prevention of Crime and Disorder

A substantial amount of cash was seized by Humberside Police under the Proceeds of Crime Act 2002. Cash forfeiture proceedings take place where it can be shown on the balance of probabilities that the cash was intended for use in unlawful conduct. Mr Mahmoud was given the opportunity to make representations against this forfeiture procedure by providing evidence that the cash did not come from crime. However On 26th January 2016, Mr Mahmoud did not contest the case for forfeiture of the monies by the Police and Hull Court ordered the forfeiture of £5365.00. Mr Mahmoud has not appealed against this decision.

It is a criminal offence to possess/supply non-duty tobacco. The offence carries a maximum sentence of 10 years imprisonment and unlimited fine. In addition the offences are Schedule 2 lifestyle offences under Proceeds of Crime Act.

Intelligence indicates that Smiths is a known outlet of illicit tobacco and has been for a number of months/years. Previous TS visits have supported this and discovered the possession of larger quantities of illicit tobacco. Despite this, complaints have continued to be received and it is suspected that the premises still continued to supply illicit tobacco.

The previous raid uncovered a hidden compartment containing illicit tobacco that has been in use for a number of months/years.

Public Safety

The illicit white cigarettes are not controlled in their manufacture and as a result the cigarettes do not meet safety standards. The standard requires that all cigarettes are self extinguishing when not being smoked. Well known illicit whites such as Jin Lings do not meet this standard and have been attributed to house fires in the region.

Definitions

Illegal tobacco can take many different forms and there can be regional variations in the names that it is given. These are the definitions that are generally understood by health and enforcement partners:

Cigarettes

'**Illicit white**' cigarettes have no legal market in the UK. UK duty has not been paid and the appropriate health warnings and images may not be present.

Counterfeit cigarettes are illegally manufactured and sold by a party other than the original trademark or copyright holder. This can also include the counterfeiting of illicit whites.

Non-Duty are genuine cigarettes produced legitimately for a local market. This includes UK and non-UK brands. They have the correct health warnings and images for the intended market (rarely in English) and are intended for legal open sale. This may include cigarettes intended for sale in another country that have been smuggled into the UK or duty free cigarettes being illegally sold, rather than kept for personal use.

Hand-rolling tobacco

Non-UK hand-rolling tobacco brands are not intended for sale in the UK.

Counterfeit hand-rolling tobacco is, like cigarettes, illegally manufactured and sold by a party other than the original trademark or copyright owner. It can also include the counterfeiting of non-UK products.

Genuine or UK hand-rolling tobacco brands include products intended for both the UK and non-UK markets.

Aras MAHMOUD:

Offence Date: 04/03/2012

Offence: Acquiring or accepting goods on which payment of VAT is believed to have been evaded.

Result: No Further Action

Offence date: 24/02/2012

Offence: Fraudulent Evasion of Duty Prohibition or Provision

Disposal: Found not guilty at Grimsby Crown Court on 11/07/2014.

Offence date: 04/03/2012

Offence: Fraudulent Evasion of Duty Prohibition or Provision

Disposal: Found guilty at Grimsby Crown Court on 11/07/2014

Received a fine of £200 or in default to serve 7 days imprisonment and confiscation of £1000 or in default to serve 2 months imprisonment

Summary of interview under caution with Aras MAHMOUD on 23 July 2015

Mr Mahmoud said he did not know the illicit tobacco was there and he only bought tobacco from the cash and carry. He claimed the money was two weeks' worth of taking from the till that he was going to use to pay for that week's deliveries.



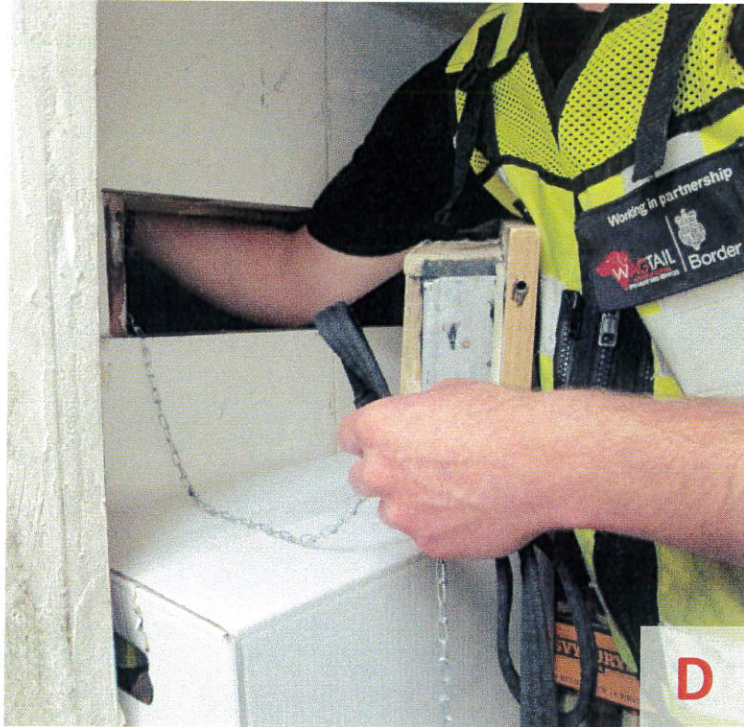
Photographs of cash found in
Smiths Convenience Store

A – Box containing coins

B & C – Bundle of notes



Photographs of hidden compartment at rear of Smiths Convenience Store



Evidence AW3A

Summary of tobacco seized items from Smiths Convenience Store on 23/07/16

Brand	Number of packs	Total number of cigarettes	Health warning
Marlboro Red Cigarettes	2	40	Polish writing
PECT Red Cigarettes	1	20	Russian Writing
PECT Blue Cigarettes	1	20	Russian Writing
Business Royals Cigarettes	1	20	No health warning or pictures
Marlboro Gold Cigarettes	1	20	Polish writing
L&M Blue label Cigarettes	1	20	Polish writing
L&M Forward Cigarettes	1	20	Non-English warning
Jin Ling Cigarettes	1	20	Russian Writing

**Communities Command
Innovation and Development - Licensing**

Scunthorpe Police Station
Corporation Road
SCUNTHORPE
North Lincolnshire
DN15 6QB

01724 241788

CommunitiesLicensing@humberside.pnn.police.uk

02 May 2016

North Lincolnshire Council
Licensing Department

Dear North Lincolnshire Licensing

Re: Representation for Smiths Convenience Store, 84-86 Frodingham Road, Scunthorpe

I write on behalf of the Chief Constable of Humberside Police. The Chief Constable wishes to support the Trading Standards Application for Review for the above premises, under the licensing objective of prevention of crime and disorder.

The Facts that the Chief Constable relies on in support of the objection are, in summary:


-
- On Thursday 18 September 2014, a Joint Operation was carried out at Smiths Convenience where Aras MAHMOUD was present. A quantity of illicit cigarettes and £8000 was found at the premises, along with a hidden compartment under the stairs holding a large quantity of cigarettes.
- On Thursday 23 July 2015, a Joint Operation was carried out at Smiths Convenience store where MAHMOUD was present. A small amount of illicit cigarettes were recovered and £5314.50 in cash under the sales counter

As a result, on 26th January 2016, a Forfeiture Directions Hearing was held between Chief Constable of Humberside Police and Aras MAHMOUD to review both cash seizures stated above. Then seizure was not contested and no representatives attended. A total of £13,314.50 was forfeited under Section 298 of the Proceeds of Crime Act 2002.

The Chief Constable reserves the right to serve further evidence in support of these representations and to expand upon the representations at any hearing in relation to the application for review.

Yours faithfully

Lisa Vines
Licensing Officer

I N T E R	<h1>MEMO</h1>	 <p>NORTH LINCOLNSHIRE COUNCIL</p>
O F F I C E		

To: Licensing Department

From: Environmental Health (Commercial)

Our Ref: SRU 210235

Subject: Smiths Convenience Store, Application for the review of a premises licence

Location: Smiths Convenience Store, 84-86 Frodingham Road

Date: 30 March 2016

Thank you for your consultation on the above application.

I can confirm this department has no comments to make.

