

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee C
Report of:	Acting Director of Regulation & Enforcement
Date of Meeting:	Wednesday 4th May 2016
Subject:	Licensing Act 2003 Premises Licence – Review
Premises:	Polish Shop Spizarnia, 210 High Street, Erdington, Birmingham, B23 6SH
Ward affected:	Erdington
Contact Officer:	David Kennedy, Principal Licensing Officer, 0121 303 9896, licensing@birmingham.gov.uk

1. Purpose of report:
To consider an application to review a Premises Licence.

2. Recommendation:
To consider and determine the review application.

3. Brief Summary of Report:
<p>Review application received on 11th March 2016 from the Chief Inspector of Weights and Measures in respect of Polish Shop Spizarnia, 210 High Street, Erdington, Birmingham, B23 6SJ.</p> <p>A representation has been received from other persons being the Erdington Ward Councillors.</p>

4. Compliance Issues:
4.1 Consistency with relevant Council Policies, Plans or Strategies:
The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

5. Relevant background/chronology of key events:
<p>The Chief Officer of Weights and Measures applied on 11th March 2016 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for Polish Shop Spizarnia, 210 High Street, Erdington, Birmingham, B23 6SJ.</p> <p>A representation has been received from other persons being the Erdington Ward Councillors, see Appendix 1.</p> <p>Review application is attached, see Appendix 2.</p> <p>A copy of the Premises Licence is attached at Appendix 3.</p> <p>Site location plans are attached at Appendix 4.</p> <p>When carrying out its licensing functions, a licensing authority must have regard to Birmingham City Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003.</p> <p>The Licensing Authority is also required to take such steps as it considers appropriate for the promotion of the licensing objectives, which are: -</p> <ul style="list-style-type: none"> a. The prevention of crime and disorder; b. Public safety; c. The prevention of public nuisance; and d. The protection of children from harm.

6. List of background documents:
<p>Copy of the representation as detailed in Appendix 1</p> <p>Review Application Form, Appendix 2</p> <p>Copy of Premises Licence, Appendix 3</p> <p>Site Plans, Appendix 4</p>

7. Options available
<p>Modify the conditions of Licence</p> <p>Exclude a Licensable activity from the scope of the Licence</p> <p>Remove the Designated Premises Supervisor</p> <p>Suspend the Licence for a period not exceeding 3 months</p> <p>Revoke the Licence</p> <p>No Action</p> <p>Where the authority takes a step to modify conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.</p>

Appendix 1

From: Gareth Moore
Sent: 29 March 2016 20:47
To: Licensing
Cc: Councillor Robert Alden; Councillor Bob Beauchamp
Subject: Licence Review - Spizarnia, 210 High Street, Erdington

Dear Licensing

Myself and Cllrs Alden and Beauchamp wish to support Trading Standards with the review of the above premises licence, which should have its licence revoked due to breaches of the Prevention of Crime & Disorder licensing objective.

The Section 182 guidance is clear that a premises found to engaged in criminal activity should have its licence considered for revocation, even in the first instance. Serious criminal activity does include the sale of illicit alcohol and cigarettes, which is commonly associated with organised crime.

This premises has been found to be engaged with serious criminal activity, despite the fact that it has been trading for several years with supposedly experienced licensee. The premises licence holder is clearly not a fit and proper person to hold a licence and so it should be revoked to end the criminality that has been taking place.

Cheers

Gareth

COUNCILLOR GARETH MOORE

Serving Abbey Fields, Court Farm, Erdington Village, Pitts Farm, Short Heath & Wylde Green

**Shadow Lead Member - Licensing & Public Protection Committee | Conservative Group Treasurer
The Council House, Victoria Square, Birmingham, B1 1BB**

Sent from my iPad

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Appendix 2

Head of Licensing, Licensing Section, PO Box 17013, Birmingham B6 9ES

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 Christopher Perry (on behalf of Donna Bensley Chief Inspector of Weights & Measures)

(Insert name of applicant)

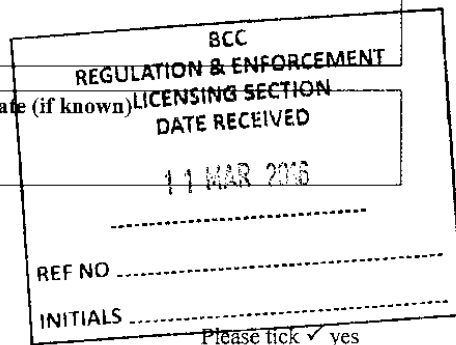
apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details; Polish Shop Spizarnia

Postal address of premises or, if none, ordnance survey map reference or description 210 High Street, Erdington,	
Post town BIRMINGHAM	Post code (if known) B23 6SJ

Name of premises licence holder or club holding club premises certificate (if known) Nelly UK Ltd
--

Number of premises licence or club premises certificate (if known) 3888
--



Part 2 - Applicant details

I am

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

2) a responsible authority (please complete (C) below)

yes ✓

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

☐

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

Please tick ✓ yes

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; Christopher Perry, Enforcement Officer for and on behalf of Donna Bensley Chief Inspector of Weights & Measures Birmingham City Council Trading Standards PO Box 16586 Birmingham B33 3EH
Telephone number (if any)
E-mail address (optional)

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

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

Please tick one or more boxes

- ☒
- ☒
- ☐
- ☐

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Please state the ground(s) for review (please read guidance note 2)

In November 2015 Birmingham Trading Standards Department received information which alleged that bottles of illicit Polish Vodka (which bore no UK Duty Paid marks) and illicit cigarettes (which bore no statutory safety markings or UK Duty Paid marks) were being sold from a licensed retail premises, namely the Spizarnia Polish Delicatessen, 210 High Street, Erdington, Birmingham (photograph 1).

On the 15th February 2016 Birmingham Trading Standards Officers and Police Officers were involved in a joint exercise visiting premises in the Erdington area to check for illicit tobacco and alcohol products. At that time a tobacco search dog was being used to detect for any concealed stashes of illicit tobacco.

Trading Standards Officers Geary Warmington and Nicola Preston, with Police Officers, entered the premises of Spizarnia Polish Delicatessen to carry out an inspection for illicit alcohol, prior to the arrival of the tobacco inspection dog. Having completed the required inspection documentation, with a Monika KRZEMINSKA who said she was in charge of the premises, Officers Warmington and Preston then checked the bottles of alcohol displayed on the shelves (photograph 2). They quickly identified that a large quantity of the spirits displayed on the shelves did not carry the UK fiscal mark as such indicating that no duty had been paid on the items. These brands included Krupnik, Wyborowa, Extra Zytinia and Starogardzka. They brought this to the attention of Ms KRZEMINSKA who said she would call the owner. During the inspection a male (Awat ARDF) arrived at the premises who said he was in charge of the premises in the absence of the DPS, Azghar AHMED. When asked where Mr Ahmed was, Mr ARDF informed the officers that he was in prison. He also stated that the Licence Holder, a company NELLY UK Ltd, was unaware of the fact that Mr AHMED was in prison and that Mr ARDF was currently in charge of the premises. Mr ARDF also stated that he had not purchased stock for the business.

During the inspection by the tobacco dog no illicit tobacco was found. 102 bottles of illicit alcohol were seized.

Companies House search for NELLY (UK) Ltd states that it is active but as had no directors since 1st October 2015 (company search attached).

This is a licensed premises that is clearly in breach of the premises licence operating conditions and is undoubtedly out of control. The DPS is alleged to be in prison the Licence Holder, NELLY (UK) Ltd has no directors therefore no leadership. Mr ARDF is not known to be a personal licence holder and therefore no experience of the licensing objectives. In view of these facts Trading Standards firmly believe that the premise licence should be revoked

Please provide as much information as possible to support the application (please read guidance note 3)

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Please tick ✓ yes
no

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

If yes please state the date of that application

Day		Month		Year	
1	1	1	1	1	1

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

N/A

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 **yes**
- I understand that if I do not comply with the above requirements my application will be rejected **yes**

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 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date 4 March 2016

.....

Capacity for and on behalf of Donna Bensley Chief Inspector of Weights & Measures

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)
(see details in section C)

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. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

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Photograph 1





Appendix 3

BIRMINGHAM CITY COUNCIL

LICENSING ACT 2003

PREMISES LICENCE

Premises Licence Number:

3888 / 1

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description Polish Shop Spizarnia 210 High Street Erdington											
Post town: Birmingham	Post Code: B23 6SJ										
Telephone Number: N/A											
Where the licence is time limited the dates N/A											
Licensable activities authorised by the licence M2 Sale of alcohol by retail (off the premises)											
The times the licence authorises the carrying out of licensable activities <table><tr><td>Monday - Saturday</td><td>09:00</td><td>-</td><td>20:00</td><td>M2</td></tr><tr><td>Sunday</td><td>10:00</td><td>-</td><td>18:00</td><td>M2</td></tr></table>		Monday - Saturday	09:00	-	20:00	M2	Sunday	10:00	-	18:00	M2
Monday - Saturday	09:00	-	20:00	M2							
Sunday	10:00	-	18:00	M2							
The opening hours of the premises <table><tr><td>Monday - Saturday</td><td>09:00</td><td>-</td><td>20:00</td></tr><tr><td>Sunday</td><td>10:00</td><td>-</td><td>18:00</td></tr></table>		Monday - Saturday	09:00	-	20:00	Sunday	10:00	-	18:00		
Monday - Saturday	09:00	-	20:00								
Sunday	10:00	-	18:00								
Where the licence authorises supplies of alcohol whether these are on and/or off supplies Off Supplies Only											

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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Nelly UK Ltd 4 Ashley Street	
Post town: Bilston	Post Code: WV14 7PA
Telephone Number: N/A	
Email	

Registered number of holder for example company number or charity number (where applicable) 7294368

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Azghar Hussein Ahmed	
Post town:	Post Code:
Telephone Number:	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number	Issuing Authority

Dated 08/11/2012

Carolyn Bennett
Senior Licensing Officer
For Director of Regulation and Enforcement

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Annex 1 – Mandatory Conditions

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either— (a) a holographic mark, or (b) an ultraviolet feature.

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:— (a) "permitted price" is the price found by applying the formula $P = D + (D \times V)$, where— (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

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Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

The Premises Licence holder will ensure that all staff are trained with regard to the Licensing Act 2003 and the sale of alcohol.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

The Premises Licence holder will not allow drunkenness or anti-social behaviour to be tolerated on the premises.

CCTV will be in operation outside both to the front and rear on the premises. CCTV footage will be made available to the police if necessary.

2c) Conditions consistent with, and to promote, public safety

No enforceable conditions identified from operating schedule.

2d) Conditions consistent with, and to promote the prevention of public nuisance

The Premises Licence holder will display 'No Public Alcohol Consumption' signs around the premises.

The Premises Licence holder will ensure that staff do not serve customer who appear to be drunk/intoxicated.

2e) Conditions consistent with, and to promote the protection of children from harm

The Premises Licence holder will always operate the Challenge 25 policy, the only acceptable forms of identification will be a Passport or Driving Licence with a photograph.

The Premises Licence holder will ensure that all alcohol above 40% volume is kept behind the counter.

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Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

3b) Committee conditions to promote the prevention of crime and disorder

That a Challenge 25 policy be introduced and enforced at the premises by all members of staff.

That 2 CCTV cameras be installed to the front and 2 to the rear of the premises and shall be operated at the premises to a specification satisfactory to the police.

That all members of staff undertake and complete all relevant training in respect of the conditions above.

3c) Committee conditions to promote public safety

N/A

3d) Committee conditions to promote the prevention of public nuisance

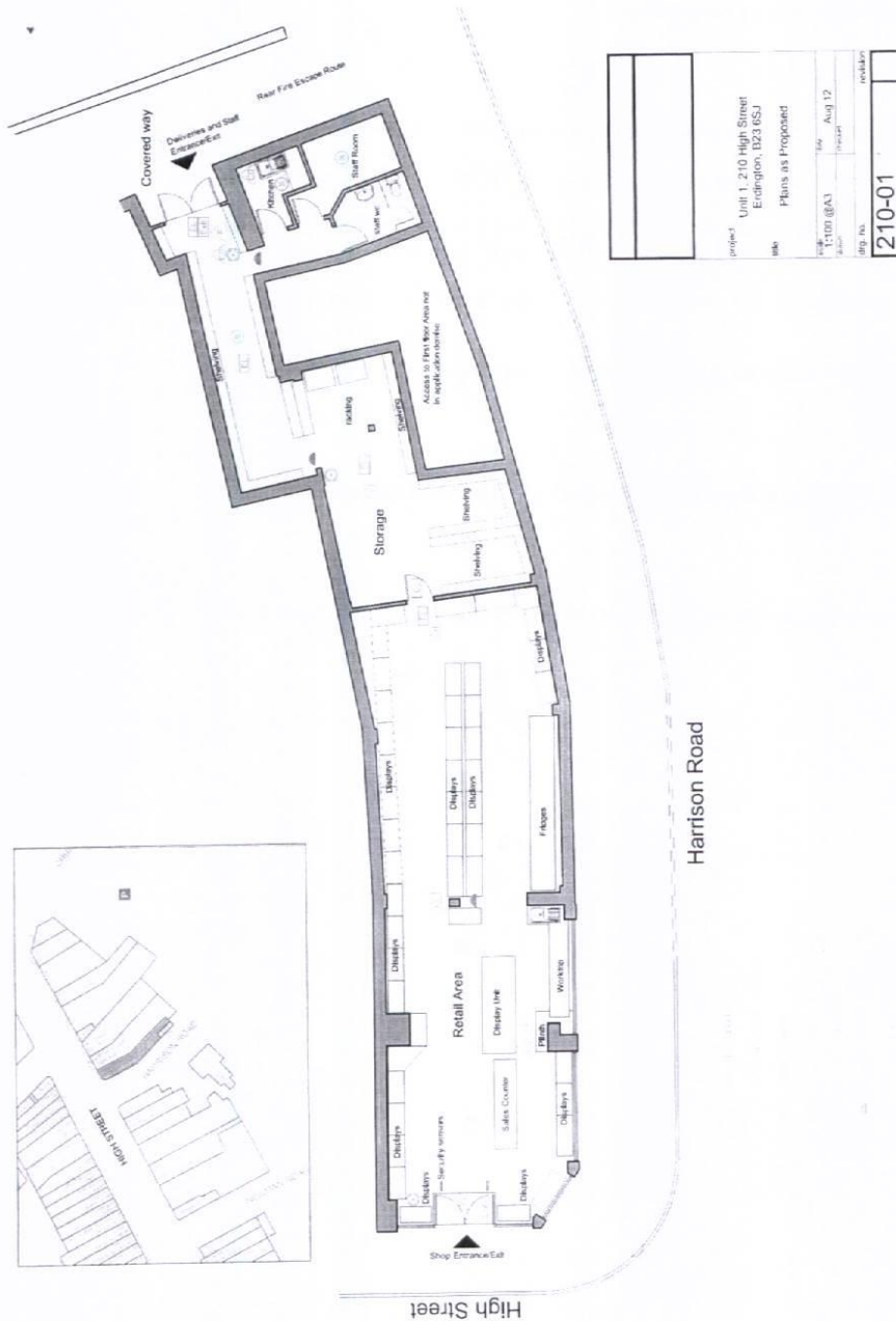
N/A

3e) Committee conditions to promote the protection of children from harm

N/A

BIRMINGHAM CITY COUNCIL

Annex 4 – Plans



Appendix 4



Birmingham City Council Map Created By:

Notes

Date of Map Creation: 18/04/2016



Scale:
1:2,500

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Birmingham City Council Map Created By:

Date of Map Creation: 18/04/2016

Notes



Scale:
1:1,250

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