

Agenda Item No: 1 – Summary of Report

Licence Reference 12/01163/REVIEW
Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 20th APRIL 2012

Report Title: K & A SUPERMARKETS LTD, BEVERAGES, 39 HIGH STREET,
MAIDSTONE, KENT, ME14 1SS

Application for Review of a Premises Licence

Report Author: Lorraine Neale

Summary:

1. The Applicant for Review – Richard Strawson on behalf of Kent County Council Trading Standards
2. Type of application applied for: Review of a Premises Licence.
3. Grounds for Review

Protection of Children from Harm:

The premises is believed to be failing in the Licensing Act objective of Protecting Children from Harm following a failed test purchase of alcohol to two volunteers (one aged 16 and one aged 15) on 16.2.12.

Affected Wards: High Street

Recommendations: **The Committee is asked to determine the application and decide whether to take such steps as members consider necessary for the promotion of the licensing objectives.**

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Licensing Authority's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

Other Material Implications:

HUMAN RIGHTS: In considering this application it is **necessary** to consider the rights of both the licenceholder and the applicant together with other parties, such as “**responsible authorities**” and/or “**interested parties**” (objectors). The hearing procedure for reviewing premises licences has been formulated to ensure a fair hearing for all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers: Licensing Act 2003
DCMS Guidance Document issued under section 182 of The Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

Contacts: Mrs Lorraine Neale at: lorraineneale@maidstone.gov.uk – tel: 01622 602028

Agenda Item No. 1

Report Title: K & A SUPERMARKETS LTD, BEVERAGES, 39 HIGH STREET, MAIDSTONE, KENT, ME14 1SS

Application for Review of a Premises Licence

Purpose of the Report

The report advises Members of an application for the review of a premises licence, brought by Richard Strawson on behalf of Kent County Council Trading Standards in respect of the premises K & A Supermarkets Ltd, Beverages, 39 High Street, Maidstone, Kent, ME14 1SS.

Issue to be Decided and Options

1. Members must, having regard to the application and any relevant representations, take such steps mentioned below as members consider necessary for the promotion of the licensing objectives.
2. The steps are:
 - To modify the conditions of the licence (including for a period not exceeding 3 months);
 - To exclude a licensable activity from the scope of the licence (including for a period not exceeding 3 months);
 - To remove the designated premises supervisor;
 - To suspend the licence for a period not exceeding 3 months;
 - To revoke the licence.
 - To issue a warning or caution.
 - To take no action.

Background

3. The relevant statutory provisions are sections 51 to 53 inclusive of the Licensing Act 2003. the Licensing Objectives are as follows:
 - The prevention of crime and disorder;
 - Public Safety;
 - The prevention of public nuisance; and
 - The protection of children from harm
4. The current premises licence was granted on 20th July 2010 a copy is attached as Appendix B.
5. The application has been correctly advertised with a notice displayed on the premises and at the Council offices for the required period.
6. The applicant is requesting that the Sub-Committee:-
 - 1) Consider a 14 day suspension of the licence.

And

- 2) add 1 further condition to the premise licence.

A personal licence holder will be on the premises at all times when alcohol sales are to be made. At times where no personal licence holder is on the premises no sales of alcohol are to be made and a sign must be prominently displayed to advise that 'NO ALCOHOL SALES' at that time

7. **Members are advised that they may only modify premises licences if it is necessary to promote the licensing objectives.**
8. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**

Chapter 2	Licensing Objectives – para 2.41 onwards protection of children from harm
Chapter 10	Conditions attached to Premises Licences
Chapter 11	Reviews
Annex D Pools of conditions - Part 5 Protection of children from harm	

9. Relevant policy statements **contained in The Licensing Authority's Statement of Licensing Policy (Jan 2008);**

Chapter 23 Protection of Children from Harm

The relaxation in the Licensing Act giving accompanied children greater access to licensed premises is seen as a positive step, which may bring about a social change in family friendly leisure but the risk of harm to children remains the paramount consideration. Clearly, this relaxation places additional responsibilities upon licence holders as well as upon parents and others accompanying children.

The protection of children from harm includes the protection of children from moral, psychological and physical harm and, in relation to the exhibition of films, the transmission of programmes by video or DVD. This includes the protection of children from exposure to strong language, sexual imagery and sexual expletives.

In certain circumstances children are more vulnerable and their needs will require special consideration. This vulnerability includes their susceptibility to suggestion, peer group influences, inappropriate example, the unpredictability of their age and the lack of understanding of danger.

Concerns

The applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of children from harm. These may include the potential for children to:-

- purchase, acquire or consume alcohol
- be exposed to drugs, drug taking or drug dealing
- be exposed to gambling
- be exposed to activities of an adult or sexual nature
- be exposed to incidents of violence or disorder
- be exposed to environmental pollution such as noise
- be exposed to special hazards such as falls from a height

Additional Steps

The following examples of additional steps are given to assist applicants. The Licensing Authority considers them to be important matters that applicants should take account of in the preparation of their Operating Schedule, having regard to their particular type of premises and/or activities:-

- Effective and responsible management of premises. Provision of a sufficient number of people employed or engaged to secure the protection of children from harm.
- Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm.
- Adoption of best practice guidance (Public Places Charter).
- Limitations on the hours when children may be present, in all or parts of the premises.
- Limitations or exclusions by age when certain activities are taking place.
- Imposition of requirements for children to be accompanied by an adult.
- Acceptance of accredited 'proof of age' cards, 'new type' driving licences with photographs, passport, an official identity card issued by HM Forces or by an EU country bearing the photograph and date of birth of bearer.

N.B. In exceptional circumstances, where **necessary**, and only where the licensing authority has received relevant representations, it may impose conditions restricting access or excluding children from premises or part of licensed premises:-

- a) at certain times of the day, or
- b) when certain licensable activities are taking place, or
- c) to which children aged under 16 years should have access only when supervised by an adult, or
- d) to which unsupervised children under 16 will be permitted access.

Examples of premises where these conditions may be considered include those where:-

- a) There have been convictions for serving alcohol to minors or where there is some evidence of under-age drinking.
- b) There is a known association with drug taking or dealing.
- c) There is a strong element of gambling on the premises.
- d) Entertainment of an adult or sexual nature is commonly provided.
- e) There is a presumption that children under 18 should not be allowed (e.g. to nightclubs, except where under 18 discos are being held)
- f) Licensable activities are taking place during times when children under 16 may be expected to be attending compulsory full-time education.

The Licensing Authority commends the Portman Group Code of Practice on the naming and packaging of alcoholic drinks. See www.portman-group.org.uk for further information.

Members of The Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to co – operate in the reduction of crime and disorder in the Borough.

Section 17 of the Crime and Disorder Act 1998 states:

“Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”

Implications Assessment

- 10 The decision should be made with regard to the Secretary of State's Guidance and the Licensing Authority's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.
- 11 **Human Rights:** While all Convention Rights must be considered, those which are of particular relevance to the application are:
- Article 8 - Right to respect for private and family life
 - Article 1 of the First Protocol - Protection of Property
 - Article 6(1)- Right to Fair Hearing
 - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices.

Conclusion

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

List of Appendices

- 12 Appendix A Application for Review
Appendix B Copy of Premises Licence
Appendix C Plan of the premises
Appendix D Plan of the area
Appendix E Human Rights Article
Appendix F Order of Proceedings

Appeal

- 13. The applicant, any interested party and the licence holder may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All any appeals must be lodged with the Magistrates' Court.**

Contact:	Senior Licensing Officer
Email:	lorraineneale@maidstone.gov.uk