

Agenda Item No: 1 – Summary of Report

Licence Reference 17/03584/REVIEW
Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 26th OCTOBER 2017
Report Title: CAPITOL EXPRESS, 11 SNOWDEN PARADE, VINTERS PARK,
MAIDSTONE, KENT, ME14 5NS

Application for Review of a Premises Licence

Report Author: Lorraine Neale

- Summary:**
1. The Applicant for Review – Oliver Jewell on behalf of Kent County Council Trading Standards
 2. Type of application applied for: Review of a Premises Licence.
 3. Grounds for Review

PREVENTION OF CRIME AND DISORDER
PROTECTION OF CHILDREN FROM HARM

The licence holders of Capitol Express are believed to have failed in the Licensing Act objectives of crime and disorder and protection of children from harm, in that the sale of a single can of beer on 27th February 2017 was made to a volunteer aged 15 years old on a test purchase operation (Appendix A). A DVD showing the details of the incident has also been provided and can be viewed if required. The sale comes after a long history of complaints and a review application made in June 2013 where the Licensing Sub Committee imposed a three month suspension of the licence which was lifted in October 2013 and the addition of conditions designed to prevent a repeat of the incidents that had been highlighted. The details of that review can be seen at <https://services.maidstone.gov.uk/meetings/ieListDocuments.aspx?CIId=397&MIId=2020>

The Police have also submitted representations received on 6th October 2017 in support of the review application made by Kent County Council Trading Standards (Appendix B).

Affected Wards: East Ward

Recommendations: **The Committee is asked to determine the application and decide whether to take such steps as members consider appropriate 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 **appropriate** 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
Home Office Guidance Document issued under section 182 of The Licensing

Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

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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 Oliver Jewell on behalf of Kent County Council Trading Standards in respect of the premises Capitol Express, 11 Snowden Parade, Vinters Park, Maidstone, Kent, ME14 5NS.'

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 appropriate 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 June 2013 a copy is attached as Appendix C.
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) Revoke the premise licence.

7. Members are advised that they may only modify premises licences if it is appropriate 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 2.1 to 2.6 crime and disorder and para 2.22 onwards, protection of children from harm.
Chapter 10 Conditions attached to Premises Licences
Chapter 11 Reviews
9. Relevant policy statements **contained in The Licensing Authority’s Statement of Licensing Policy (Jan 2016);**

17.9 CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

17.10 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- Prevention of disorderly conduct and anti-social behaviour
- Prevention of underage drinking
- Prevention of sales of alcohol to intoxicated customers
- Prevention of drunkenness both on and in the vicinity of the premises
- Prevention of drug use and drug dealing
- Restriction to responsible drinks promotions
- Use of safety glass
- Inclusion of a wind-down time following alcohol sales period
- Adequate seating to discourage “vertical drinking”
- The offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.11 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) ‘wind down’ or ‘drinking up’ period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.12 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol, have later opening hours and are situated within the Town Centre night time economy area.

17.13 Where appropriate, applicants for licences in the Town Centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.14 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.15 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to promotion of the licensing objectives.

17.23 **CONDITIONS TO PROMOTE THE PROTECTION OF CHILDREN FROM HARM.** Applicants will be expected to detail any appropriate and proportionate steps to protect children at the premises from any harm. The Licensing Authority recognises the right of licensees (serving alcohol) to allow accompanied children into their premises. The Licensing Authority would not seek to restrict access by children (above that specified in the Act) unless it is necessary for the prevention of physical, moral or psychological harm.

17.24 Steps to protect children from harm must be carefully considered for inclusion where:

- (i) There is entertainment or services of an adult nature provided.
- (ii) There have been previous convictions for under age sales of alcohol.
- (iii) There has been a known association with drug taking or dealing.
- (iv) There is a significant element of gambling on the premises.
- (v) There is a presumption that children under 18 should not be permitted entry such as to nightclubs (apart from when specific events are held for under 18's).
- (vi) Outcomes of discussions with relevant Responsible Authorities suggest such steps are applicable.

17.25 Nothing in the Licensing Act prevents licensees from excluding children from a licensed premises and no condition can be added to require the admission of children.

17.26 Where there are no matters that give rise to concern in respect of children at premises the Licensing Authority would expect to see the relevant box on an application form completed to specify NONE.

Implications Assessment

- 10 The decision should be made with regard to the Home Office 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 Police representation
- Appendix C Premises Licence
- Appendix D Plan of the premises
- Appendix E Plan of the area
- Appendix F Human Rights Article
- Appendix G 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.

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