

Agenda Item No: 1 – Summary of Report

Licence Reference 19/03259/REVIEW
Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 8TH OCTOBER 2019
Report Title: UPMART NEWSAGENT, 56 GABRIELS HILL, MAIDSTONE, KENT,
ME15 6JJ

Application for Review of a Premises Licence

Report Author: Lorraine Neale

Summary:

1. The Applicant for Review – Chief Inspector Quiller on behalf of Kent Police
2. Type of application applied for: Review of a Premises Licence.
3. Grounds for Review

PREVENTION OF CRIME AND DISORDER
PUBLIC SAFETY
PREVENTION OF PUBLIC NUISANCE

The premise licence holder (PLH) of Upmart news is believed to have failed in the Licensing Act objectives of crime and disorder, public safety and prevention of public nuisance, in that on two occasions on 5th June and 13th June 2019 the Police witnessed the premises sell alcohol to individuals who were intoxicated. (Appendix A). The Police licensing officer engaged with the designated premises supervisor (DPS) on behalf of the PLH to resolve the issue. The suggestion was to attach suitable conditions by submitting a minor variation to the licensing department. The premises failed to submit an application and the Police believe that the DPS and PLH are not prepared or willing to take reasonable measures to prevent incidents of this type recurring.

Affected Wards: High Street 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 licence holder 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

4. The report advises Members of an application for the review of a premises licence, brought by Chief Inspector Quiller on behalf of Kent Police in respect of the premises Upmart Newsagent, 56 Gabriels Hill, Maidstone, Kent, ME15 6JJ

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 22nd February 2013 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) attach conditions reducing hours permitted for sale of alcohol to 11:00 – 00:00 daily .

2) Attach conditions 1. – 16 as follows, found at appendix A, application for review.

- I. CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.
- II. 2. Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale and supply of alcohol occurs.
- III. 3. Equipment must be maintained in good working order, be correctly time and date stamped, recordings MUST be kept on the hard drive and kept for a period of 31 days and handed to Police upon reasonable request.
- IV. The premises licence holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority upon reasonable request.
- V. In the event of technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to a member of police staff at the front counter at Maidstone Police Station, by the next day that the front counter is open (Monday to Friday).
- VI. A member of staff who can operate the CCTV will be on duty at all times the premises are open to the public and will be able to provide the Police and local authority with a copy of CCTV, upon request.
- VII. At least one member of staff with a personal licence will be on duty at all times that the premises are open for the sale of alcohol.
- VIII. No beer, lager, cider, perry or spirit mixer above 5.5% ABV will be sold.
- IX. No single can sales of beer, lager or cider will be made only 4/6 pack sales.
- X. All persons that sell or supply alcohol to customers must have licensing training.
 - a. Training should take place within six weeks of employment and any new employees will be supervised until the training has taken place.
 - b. Refresher training should be repeated a minimum of every six months or earlier if required due to changes of legislation.
 - c. Training records must be kept on the premises and shall contain the nature, content and frequency of all training.
 - d. Records must be made available for inspection by Police, Police Licensing Officer and authorised officers from the Local Authority upon request either electronically or hard copy.
- XI. A refusal recording system will be in operation at the premises. All staff involved in the sale of alcohol will be fully trained in the system and it will record the following:
 - a. Time of refusal
 - b. Item refused
 - c. Name of description of the person refused
 - d. Reason for Refusal
 - e. Name of staff member making the refusal.

- XII. The refusal system will be available for inspection to any Police Officer, Local Authority Licensing Officer or Trading Standards Officer at any reasonable time.
- XIII. A Challenge 25 scheme will be adopted at the premises. All staff involved in the sale or supply of alcohol will be trained in the scheme and such training will be recorded. Such records will be available to the Police or other responsible authority upon request.
- XIV. The premises license holders will adopt a 'Challenge 25' policy and all staff that are involved in the sale or supply of alcohol will be fully trained in this policy and such training recorded.
- XV. 'Challenge 25' signs will be prominently displayed.
- XVI. The only proof of age that will be accepted by staff will be a photographic driving licence, a passport or a 'PASS' marked proof of age card.

3) suspend for a period of up to 3 months – to allow training of staff and implementation of the measures necessary to comply with the premises 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, para 2.7 to 2.14 public safety and para 2.15 to 2.21 public nuisance.
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.

17.16 CONDITIONS TO PROMOTE PUBLIC SAFETY.

The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

17.17 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.

17.18 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.

Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:

- (i) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol
- (ii) Nightclubs.
- (iii) Cinemas
- (iv) Theatres.
- (v) Other premises where regulated entertainment is likely to attract a large number of people.
- (vi) Where conditions of occupancy have arisen due to representations received.

17.19 CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

17.20 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premise
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation
- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (iv) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (v) Availability of public transport to and from the premises
- (vi) Delivery and collection times and locations.
- (vii) Impact of external security or general lighting on residents
- (viii) History of management of and complaints about the premises
- (ix) Applicant's previous success in preventing Public Nuisance.
- (x) Outcomes of discussions with the relevant Responsible Authorities.
- (xi) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
- (xii) Collection of litter arising from the premises

17.21 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

17.22 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

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 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

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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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