

Agenda Item No: 1 – Summary of Report

Licence Reference MAID0185/LPRM/3983
Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 11 JULY 2011

Report Title: MARMARIS, 44 MOTE ROAD, MAIDSTONE, ME15 6ES

Application for Review of a Premises Licence

Report Author: Lorraine Neale

Summary:

1. The Applicant for Review – Richard Strawson on behalf of the 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 review is being requested because it is believed that the premises is failing in the Licensing Act objective of Protecting Children from Harm by the apparent willingness to allow a sale by proxy to a 15 year old volunteer.

A test purchase operation was conducted at the premises on 17th March 2011 on the basis of intelligence received. This operation was conducted by the Trading Standards Department of Kent County Council. At approximately 7pm a test purchase attempt was made by a 15 year old female volunteer. Trading Standards Officer Oliver Jewell was in the premises to witness the attempted test purchase.

The attempted purchase was initially refused by the person selling. When the volunteer left the shop another customer in the shop began to tell the person selling that the volunteer was “his mates sister” and that she was 19 years old. The person selling explained that they had a Challenge 25 policy by pointing to a poster above the till. The male suggested that he could make the purchase on behalf of the volunteer and the person selling nodded to imply that he could allow that. The male left the shop to catch up with the volunteer. The female volunteer declined the offer and the third party left. This was all witnessed by the Trading Standards Officer Oliver Jewell.

Trading Standards Officer Oliver Jewell returned to Marmaris on 18 March 2011. An explanation was given to the events of 17th March 2011 and it was considered that if the volunteer had agreed, a proxy sale would have been made.

Affected Wards: High Street - East

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 applicant and 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

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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 Richard Strawson on behalf of the Kent County Council Trading Standards in respect of the premises Marmaris, 44 Mote Road, Maidstone, ME15 6ES. There have been no representations from any other Responsible Authorities or Interested Parties.

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 29th May 2008 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) suspend the licence for at least 14 days.
 - 2) add further conditions to the premise licence.
 - i. The sale of alcohol may only be transacted by a personal licence holder at all times. At any time when no personal licence holder is present to make a sale, a sign will be displayed prominently to make purchasers aware that there are to be 'NO ALCOHOL SALES'
 - ii. Additional posters will be displayed on the premises in a location to be agreed by Kent Police and Local Authority Officers to raise awareness of customers as to the issue of 'proxy sales'.
 - 3) Existing conditions 12, 13 and 14 should be amended to reflect a change in best practice recommendations from 'Challenge 21' to 'Challenge 25'.
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 2.13
Chapter 10	Conditions attached to Premises Licences
Chapter 11	Reviews

Annex D, part 5

Pool of conditions relating to the 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

A mandatory condition will be applied requiring access to be restricted to those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification or in specific cases the Local Authority.

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 the event of an unclassified film, then it is expected that the

Licensing Authority will view the film before it is shown in the Council's area.

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.

The body of the Local Authority recognises as being confident to advise on matters relating to the protection of children from harm is Kent Social Services, Brenchley House, County Hall, Maidstone, Kent ME14 1RX.

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