

Buckinghamshire Council

**Licensing Sub-Committee Hearing Date:
22 April 2021, 18:00 hours**

Agenda Item No: 5

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| SUBJECT: | APPLICATION FOR THE REVIEW OF A PREMISES LICENCE at: High Wycombe Food & Wine, 180 Desborough Road, High Wycombe, HP11 2QA |
| REPORT OF: | Application under section 51, Licensing Act 2003 |
| Responsible Officer | Brian Whittall – Licensing Officer |
| Report Author | Brian Whittall – Licensing Officer |
| Ward/s Affected | Abbey |

1. Purpose of Report

To provide Members with information to enable the determination of an application for the review of a Premises Licence, in respect of which further relevant representations have also been received. The review Application has been submitted by Lawrence Eldridge on behalf of Buckinghamshire and Surrey Trading Standards (“the applicant”), in respect of High Wycombe Food & Wine, 180 Desborough Road, High Wycombe, HP11 2QA (“the premises”).

2. Background

- 2.1 The current nature of the business is a small convenience and off licence store.
- 2.2 In September 2007 an application for a premises licence was received by this authority under section 17 of The Licensing Act 2003 (“The Act”) by Mr Surjan Singh Sethi of Lynhurst Crescent, Hillingdon. The following year the police requested that the licence be reviewed following a number of licence breaches.
- 2.3 In March 2010 a further police request was made for the review of the premises licence. Following a hearing of the Licensing Sub-Committee the premises licence was revoked in May 2020. This decision was upheld on appeal at the Magistrates Court.

- 2.4 In January 2011 the brother of Mr Sethi, Mr Jaswin Singh Sethi of Mornington Road, Greenford made an application for a premises licence under section 17 of The Licensing Act 2003 'The Act'.
- 2.5 In December 2019 the premises were found to be selling Guinness Extra contrary to a licence condition not to conduct the retail sale of alcohol for products in excess of 6% abv.
- 2.6 Following this incident Mr Jaswin Singh Sethi applied under section 41, Minor Variation of a Premises Licence to have the condition attached to his authorisation amended so that he could stock specialist alcohol products. After receiving a valid representation by the police this application was refused **Appendix 1**.

A copy of the current Premises Licence is attached to this report marked **Appendix 2**.

A location plan showing the premises location is attached to this report marked **Appendix 3**.

3. The Application

3.1 This application is for a review of the Premises Licence on the grounds the prevention of crime and disorder. A copy of the review application is attached to this Report marked **Appendix 4**.

3.2 The current permitted licensable activities are as follows:

| <u>Licensable activity</u> | <u>Standard days and timings</u> |
|---------------------------------------|----------------------------------|
| Supply of alcohol | Every Day 10:00 – 23:00 |
| Hours premises are open to the public | Every Day 10:00 – 23:00 |

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** No Response received: No comment
- 4.1.2 **The Fire and Rescue Authority:** No Response received: No comment
- 4.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received: No comment
- 4.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** No Response received: No comment
- 4.1.5 **Weights and Measures Authority (Trading Standards Officer):**
No additional response received.
- 4.1.6 **The Safeguarding and Child Protection Unit:**

No response received. No comment

4.1.7 No responses were received from any other Responsible Authority.

4.2 No letters of support were received.

5. Relevant Policy Considerations:

In relation to the Prevention of Crime and Disorder the Statutory Guidance states:

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.
- 2.7 It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. However, licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act and to ensure, for example, that the prevention of disorder is in sharp focus for all managers, licence holders and clubs.

In relation to the prevention of crime and disorder the policy states that:

- 3.8 The Authority accepts that the legislation does not require the presence of either a personal licence holder or the Designated Premises Supervisor on the premises at all times when alcohol is sold. The Authority would recommend that personal licence holders give written authority to other staff for alcohol sales and clear guidance on whom alcohol may be sold to. Applicants are invited to provide details of how Personal Licence holders will authorise alcohol sales. In exceptional circumstances and upon receipt of a relevant representation, the Authority will consider whether a condition should be imposed requiring the presence of a Personal Licence holder on the premises at all times when alcohol is available for sale.
- 3.9 The Authority will expect prevention of crime and disorder measures to be appropriate to the type and location of premises e.g. the provision of door supervisors and CCTV are likely

to be more appropriate in larger venues, dance venues and those in busy town centre locations.

In relation to a Review of a Premises Licence the guidance states

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

The Council Policy states in relation to a Review of a Premises Licence

8.2 The importance of working in partnership to achieve the promotion of licensing objectives cannot be under-stated and responsible authorities will aim to give licensees early warning of any concerns identified at a premise. At any stage following the grant of a premises licence, however, a responsible authority, an interested party including a local Councillor may ask the licensing authority to review the licence because of a matter arising at the premises in connection with one of the four licensing objectives. In addition, a review of the licence will normally follow any action to close the premises (for up to 24 hours) on the grounds of disorder or noise nuisance or as a result of a magistrates' court determination.

8.5 In order to successfully bring a review of a licence, evidence will be required of breaches of one of the licensing objectives. As a result, it may assist interested parties to liaise with the relevant responsible authority prior to submitting an application for review (e.g. the police in cases of disorder or the Control of Pollution department in cases of noise nuisance). The person requesting the review is also required to notify the premises licence holder and all responsible authorities of their review application.

8.6 In cases where the crime prevention objective is being undermined it is expected that revocation of the licence (even in the first instance) will be seriously considered,

Powers of a licensing authority on the determination of a review (p.77 of the guidance)

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

5. Resources, Risk and Other Implications

5.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeal against the decision of the Licensing Sub-Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.

5.2 **Human Rights:** The Licensing Sub-Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub-Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.

5.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also needs to be considered. The persons making relevant representations have a right to respect for their private and family life and their home. They are entitled not to be disturbed by unreasonable noise and/or nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.

5.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination (which is an absolute right) also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group or other status.

5.5 Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and can not be interfered with.

5.6 Therefore if Members revoke or restrict the Premises Licence in whole or part this will be a breach of the rights of the Applicant unless such revocation or restriction (in full or part) is,

and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any revocation or restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the community at large's enjoyment of their property/possessions.

5.7 By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.

5.8 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

6. Determination by the Licensing Sub-Committee

6.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Regard must also be had to the Council's Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

6.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.

6.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.

6.4 The following options are available to the Licensing Sub Committee in determining the review application:

- modify the conditions of the licence;
- exclude a licensable activity from the scope of the licence;
- remove the designated premises supervisor;

- suspend the licence for a period not exceeding three months;
- revoke the licence.
- take no further action or take informal action.

6.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

Informative/s -

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| Background Papers: | Application Ref 0 21/00323/LAREV Licensing Act 2003, as amended Licensing Policy – Wycombe Bucks Area Published December 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended. |