

SUBJECT:	APPLICATION FOR A REVIEW OF A PREMISES LICENCE at: Grosik, 4/5 Thame House, Castle Street, High Wycombe, Bucks, HP13 6RZ
REPORT OF:	Application under section 51, Licensing Act 2003
Responsible Officer	Kerryann Ashton – Licensing Officer
Report Author	Kerryann Ashton – Licensing Officer
Ward/s Affected	Abbey

1. Purpose of Report

- 1.1 To provide Members with information to enable the determination of an application for the review of a premises licence.
- 1.2 The application has been submitted by Andy Dean, on behalf of the Chief Constable of Thames Valley Police, Thames Valley Police Headquarters South, Oxford Road, Kidlington , OX5 2NX the applicant”) in respect of ‘Grosik, 4/5 Thame House, Castle Street, High Wycombe, Bucks, HP13 6RZ (“the premises”).
- 1.3 This review application has been submitted on the grounds of promoting the prevention of crime and disorder. Supporting information has been provided in the application form shown in **Appendix 2**.

2. Background

- 2.1 The premises is located in High Wycombe Town Centre in a mixed commercial and residential area. The premises has offices above.
- 2.2 A premises licence was initially granted by Wycombe District Council in April 2012. This licence was subsequently subject to a period of suspension and then revocation following review applications submitted by Trading Standards, as detailed in the history below:
- 2.3 On the 12th August 2014, a hearing of the Licensing Sub-Committee convened to determine an application made by Trading Standards under section 51, Licensing Act 2003, for a review of the premises licence. The application was made following a visit to the premises in April

2014 by Trading Standards Officers, when a large quantity of cigarettes and alcohol was found in two hidden enclosures. These products were intended for sale but did not have UK duties paid.

- 2.4 The Licensing Sub-Committee determined to suspend the premises licence for a period of 12 weeks to promote the licensing objectives. An informative was given to the then licence holder in the decision notice that should there be further breaches of the Licensing Act 2003, serious consideration would be given to the revocation of the premises licence.
- 2.5 On the 24th February 2015, Trading Standards found a large quantity of tobacco that did not have UK duties paid, hidden in a light fitting in the premises and outside in a vehicle belonging to the former licence holders. In April 2015, the Licensing Sub-Committee determined to revoke the premises licence following an application for a Review. The decision to revoke the licence was not appealed.
- 2.6 An application for a new premises licence was received in December 2015, which was subsequently granted without representation in January 2016 to a new licence holder. The licence was then transferred in February 2020 to another new licence holder and then again in October 2021 to Mr Soran Ghaderi.
- 2.7 In August 2022, Council Licensing and Trading Standards Officers visited the premises and discovered illegal tobacco products hidden on the premises and identified several offences under the Licensing Act 2003, which included non-compliance with licence conditions and failure to display the licence summary.
- 2.8 During the visits of August 2022, Mr Soran Ghaderi informed Council officers that the owner of the business was Mr Salam, later identified by officers as Mr Diako Mohammad Salam. In a subsequent interview with officers from Buckinghamshire Council and Thames Valley Police, Mr Salam confirmed that he had bought the business in December 2021 but had not transferred the licence at the time as he was waiting for Lambeth Council to issue his personal licence.
- 2.9 As a condition of agreeing not to object to applications to transfer the licence and vary the DPS into Mr Salam's name, Thames Valley Police requested additional conditions be added to the premises licence. Consequently, a minor variation application was submitted on the 24th August 2022 to add additional conditions to the licence. This application was granted.
- 2.10 On 14th October 2022, staff employed at the premises failed an underage test purchase exercise when alcohol was sold to a person who was 16 years old. Officers from Buckinghamshire Council and Thames Valley Police in attendance also found non-compliance with the licence condition relating to operation of the CCTV system. Mr Salam, was issued with a formal warning for non-compliance with the condition relating to CCTV. A subsequent visit by Council officers on 17th October 2022 found further breaches of licence conditions.
- 2.11 A copy of the current licence is attached as **Appendix 1**.

2.12 A valid application to review the Premises Licence was made on the 2 December 2022 on the grounds of prevention of crime and disorder. The application can be found marked **Appendix 2**.

2.13 The plan attached to the Premises Licence can be found marked, **Appendix 3**.

2.14 The location of the premises can be found, **Appendix 4**.

3. Relevant Representations

3.1 Responsible Authorities:

3.1.2 **The Fire and Rescue Authority:** No Response received: No comment

3.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received: No comment

3.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** No response received. No comment

3.1.5 **Weights and Measures Authority (Trading Standards Officer):** Representation submitted. Attached as **Appendix 5**.

3.1.6 **The Safeguarding and Child Protection Unit:** No response received. No comment

3.1.7 **The Licensing Authority:** Representation submitted. Attached as **Appendix 6**.

3.1.8 No responses were received from **Any Other Person**.

3.2 The licensing authority has complied with the requirement to advertise the application in accordance with the regulations at the premises, on the Council's website and at the Council offices in High Wycombe.

4. Relevant Policy Considerations:

4.1 Regard must be given to the Council's Statement of Licensing Policy (published March 2022) when determining this application. Of particular relevance (but not limited to) are the following sections from Part C, "promoting the licensing objectives" and Part D, "the system in action":

"Part C...

3.6 The Licensing Authority will also take this Policy into account when deciding upon review applications. If a failure to comply with the Policy has been a contributory factor in the non-promotion of the licensing objectives, this is likely to be reflected in any decision made by the Licensing Authority.

3.14 The Licensing Authority seeks to encourage the highest standards of management in licensed premises and expects this to be demonstrated through the operating schedule. When assessing the applicant's or licensee's ability to demonstrate a

commitment to high standards of management the Licensing Authority will take into account whether the applicant or licensee:

- Can demonstrate comprehensive knowledge of best practice.
- Has sought advice from the responsible authorities.
- Has implemented any advice that has been given by the responsible authorities.
- Is able to understand verbal and written advice and legal requirements.
- Can demonstrate knowledge of the licensing objectives, relevant parts of the Policy and their responsibilities under the Licensing Act 2003.
- Is able to run their businesses lawfully and in accordance with good business practices.
- Can demonstrate a track record of compliance with legal requirements.

3.15 Where there is a history and pattern of non-compliance associated with the management of the premises, linked to an adverse effect on the promotion of the licensing objectives, the Licensing Authority is unlikely to grant a new or variation application, or permit premises to continue to operate without further restrictions on review, unless there is evidence of significant improvement in management standards.

3.26 Section 17 of the Crime and Disorder Act 1998 places a legal duty on the Council to consider the reduction of crime and disorder, including the reduction of anti-social behaviour, in all its activities. The Licensing Authority will look to the police as the main source of advice on crime and disorder matters and will also seek to involve the local Community Safety Partnership for advice on anti-social behaviour.

3.28 The Licensing Authority will treat the police as the main source of advice on conditions to be applied in order to promote the crime prevention objective. Conditions imposed on licences will, so far as possible, reflect any local crime prevention strategies and the local Police and Crime Plan published by the Police and Crime Commissioner for Thames Valley.

3.32 In considering licence applications, where a relevant representation has been made, or if advice is sought from a potential applicant regarding the crime and disorder objective, the Licensing Authority will particularly consider the following:

Accountability

Robust systems of accountability should be in place to ensure the premises are run in accordance with the Premises Licence or Club Registration Certificate. Such systems should clearly show how duties will be delegated, deal with authorisations to dispense alcohol and identify who is in control of the premises on a day to day basis.

Responsible sale and supply of alcohol

It is expected that all premises licensed to sell and supply alcohol will have measures in place to prevent:

- The sale and supply of alcohol to children
- Serving alcohol to customers who are drunk
- Permitting drunkenness on the premises
- Encouraging irresponsible drinks promotions
- Spiking of drinks
- Anti-social street drinking in the local vicinity.

The expected measures include written policies and procedures, documented staff training and refresher training, the use of refusal logs and incident reports and use of appropriate signage.

Part D...

4.3 In making licensing decisions, the Licensing Authority will have regard to its duties under the following legislation:

- a) Section 17 of the Crime and Disorder Act 1998, which requires the Licensing Authority to exercise its functions with due regard to the likely effect of its decisions on crime and disorder and the misuse of drugs, alcohol and other substances.

4.26 The Licensing Authority can only review a licence on specific application and where it is alleged that the licensing objectives are being breached. The Act allows for any person to apply for a review, including local residents and responsible authorities. Applications for a review of a premises licence which involve the issues outlined below (the list not being exhaustive) are viewed particularly seriously:

- Illegal purchase and consumption of alcohol by minors.
- Use of premises for the sale of smuggled tobacco, alcohol or other goods.

4.4 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended. Chapter 11 of the Guidance relates specifically to licence reviews, of particular relevance are the following paragraphs:

“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.

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) 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

Resource:

5.1 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.

Human Rights:

5.2. The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents. Any decision taken must be appropriate and proportionate to the objective being pursued. In particular, the following should be taken onto consideration: Article 6 - the right to a fair hearing Article 8 - respect for private and family life Article 1, First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence).

5.3. 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 cannot be interfered with.

5.4. Therefore, if Members determine to revoke or suspend the licence, remove the DPS or modify the conditions, this will be a breach of the rights of the licence holder unless such decision is appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large. Any decision 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 rights.

5.5. 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.

5.6 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 application:

- (a) modify the conditions of the licence;
- (b) exclude a licensable activity from the scope of the licence;
- (c) remove the designated premises supervisor;
- (d) suspend the licence for a period not exceeding three months;
- (e) revoke the licence.
- (f) take no further action or take informal action

6.5 The Sub-Committee is asked to note that it may not make a decision merely because it considers it desirable to do so. The decision 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 22/01126/LAREV <u>Licensing Act 2003, as amended</u> <u>Licensing Policy – As adopted March 2022.</u> <u>Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended (December 2022).</u>