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| SUBJECT: | Review of premises licence at Stoke Convenience Store, 59 Stoke Road, Aylesbury, Buckinghamshire, HP21 8BL following a closure order |
| REPORT OF: | Review in accordance with Section 167, Licensing Act 2003 following closure order under section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014. |
| Responsible Officer | Kerryann Ashton – Licensing Officer |
| Report Author | Kerryann Ashton – Licensing Officer |
| Ward/s Affected | Aylesbury North |

1. Purpose of Report

To provide Members with information to enable the determination of a review of a premises licence in accordance with section 167 of the Licensing Act 2003 following the making of a closure order by the Magistrates Court under section 80 of Anti Social Behaviour Crime and Policing Act 2014.

2. Background

The premises is a small shop located on the outskirts of Aylesbury Town Centre in a predominantly residential area and forms part of a parade of two shops on a busy road. The premises has flats above. A location map of the premises is attached at **Appendix 1**.

A Premises Licence was granted by Buckinghamshire Council on the 6 September 2021. The premises licence holder, Mr Suthakaran Krishnapillai, has held the licence since it was granted and he is also the designated premises supervisor.

A copy of the current licence and associated premises plan is attached as **Appendix 2**.

The licence authorises the carrying out the following licensable activities:

Sale by retail on alcohol (off the premises)

Monday: 06:00 - 23:00 Tuesday: 06:00 - 23:00 Wednesday: 06:00 - 23:00 Thursday: 06:00 - 23:00
Friday: 06:00 - 23:00 Saturday: 06:00 - 23:00 Sunday: 06:00 - 23:00

Hours premises open to the public

Monday: 06:00 - 23:00 Tuesday: 06:00 - 23:00 Wednesday: 06:00 - 23:00 Thursday: 06:00 - 23:
Friday: 06:00 - 23:00 Saturday: 06:00 - 23:00 Sunday: 06:00 - 23:00

The closure order

On the 3 December 2024 a closure order under Section 80 of the Anti Social Behaviour Crime and Policing Act 2014 was made by High Wycombe Magistrates Court in relation to 'Stoke Convenience Store, 59 Stoke Road, Aylesbury, Buckinghamshire, HP21 8BL' ("the premises") on application by Trading Standards Officers.

Once made, a closure order prohibits access to the premises concerned for a period specified in the order. That period may not exceed 3 months. A closure order may prohibit access:

- a) by all persons, or by all persons except those specified, or by all persons except those of a specified description;
- b) at all times, or at all times except those specified;
- c) in all circumstances, or in all circumstances except those specified.

A closure order:

- a) may be made in respect of the whole or any part of the premises;
- b) may include provision about access to a part of the building or structure of which the premises form part.

The closure order is attached at **Appendix 3**.

The closure order made in relation to Stoke Convenience Store specifies that the retail area of the premises must remain closed for a period of one month from the date of the order (3.12.24).

3. The Review Process

Following the making of the closure order, the Magistrates gave notice of the order to the licensing authority, under s167(1)(b) of the Licensing Act 2003, on 18 December 2024. In accordance with s167(2) the licensing authority must review the premises licence. A copy of this notification is attached as **Appendix 4**.

A 7-day public advertising exercise of the review has been undertaken in accordance with Licensing Act 2003 regulations. Specifically, on 19 December 2024 a blue A4 notice was displayed at or near the premises advertising the review and notices were displayed at the Council's Head Office and published on Buckinghamshire Council's website. A notice of the review and the

closure order were given to the licence holder and each of the responsible authorities. Notification was received on 23 December 2024 that the public notice could no longer be seen displayed at the premises and on the same day officers returned to display a further copy of the notice in 2 locations. The premises was visited again on 24 December 2024 and it was confirmed that the notice was still on display.

The review hearing itself must generally commence within 10 working days of receipt of the Magistrate's notification, although the licensing authority has discretion to extend this period where it is in the public interest to do so. On this occasion that discretion has been used to extend the timeframe for commencing the hearing and interested parties have been notified in accordance with Regulation 11 of the Licensing Act 2003 Hearing Regulations 2005.

Once the licensing authority has received notification from the court that a closure order has been made, it must reach a determination on a review of the premises licence no later than 28 days after the day on which it receives the notice.

The licence holder and other parties to the hearing must be given a minimum of 5 working days notice prior to the hearing and provided with all relevant representations received.

3. Relevant Representations

To be 'relevant' and, therefore, able to be taken into account when considering the review, any representations received by the licensing authority must relate to the promotion of one or more of the licensing objectives. Representations may be made by the holder of the premises licence, a responsible authority or any other person. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious. Representations are required to be made within the 7 day advertising period.

3.1 Responsible Authorities:

- 3.1.2 **The Fire and Rescue Authority:** Response received. No comment – see **Appendix 5**
- 3.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received.
- 3.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** Response received. No comment - see **Appendix 6**
- 3.1.5 **Weights and Measures Authority (Trading Standards Officer):** Response Received – see **Appendix 7**
- 3.1.6 **The Safeguarding and Child Protection Unit:** No response received.
- 3.1.7 **The Licensing Authority:** Response Received – see **Appendix 8**

3.1.8 **The Chief Officer of the Police, Thames Valley Police (Licensing):**
Response Received – see **Appendix 9**

3.2 Other Persons:

A representation was received from a member of the public, however this was not valid.

4. Licensing Officer's Observations

4.1 Representations

The relevant representations raise the following issues:

- **Prevention of crime and disorder**
- **Public Safety**
- **Protection of children from harm**
- Representations include extensive supporting documentation setting out the events leading to the closure order being made, evidence of counterfeit tobacco and illegal vapes being found on the premises, evidence of underage sales of alcohol and tobacco from the premises and non compliance with licence conditions.
- Representations are in support of a review of the premises licence.

Relevant Policy and Statutory Guidance Considerations:

4.2 Buckinghamshire Council licensing policy

Regard must be given to the Council's Statement of Licensing Policy (published March 2022) when determining this review. Of particular relevance (but not limited to) are the sections relating to Section 3 Part C - promoting the licensing objectives and Section 4 Licence Reviews.

"The Licensing Authority will take this Policy into account when determining a review. 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." (Para 3.6)

"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 ... licensee: (Para 3.14)

- 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.”

“Where there is a history and pattern of non-compliance associated with the management of the premises, linked to an adverse affect on the promotion of the licensing objectives, the Licensing Authority is unlikely to ... permit a premises to continue to operate without further restrictions on review, unless there is evidence of significant improvement in management standards”. (Para 3.15)

“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.” (Para 3.26)

“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”

“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.” (Para 3.32)

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. (Para 4.3)

4.3 Statutory Guidance

Regard must also be had to the national [Guidance](#) issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

The Secretary of State’s Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates’ courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

Section 11 of the Guidance outlines the review process and the powers available to licensing authorities when determining reviews. Of particular relevance are the following paragraphs:

“The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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.” (11.17)

“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.” (11.18).

“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 to address the causes of concern that instigated the review.” (11.20).

In relation to reviews arising in connection with crime the Guidance states:

“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 sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- 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 prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;

- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.” (11.27).

“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.” (11.28).

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 revoke, suspend or impose additional conditions, this could be considered a breach of the rights of the licence holder unless such determination is 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

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.

5.5. 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 SubCommittee'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 A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the 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 case 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 authority must take such of the steps below as it considers appropriate for the promotion of the licensing objectives. The steps are –

- (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

The conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

6.5 All licensing determinations should be considered on the individual merits of the case. The Panel’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability. It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

6.6 Section 168 of the Licensing Act 2003 sets out the timescales of when decisions following review take effect:

- (1) “... a decision under section 167 does not have effect until the relevant time.
- (2) In this section “the relevant time”, in relation to any decision, means—
 - (a) the end of the period given for appealing against the decision, or
 - (b) if the decision is appealed against, the time the appeal is disposed of.”

Although this section of the Act does make different provisions for premises that are closed at the time of review, it should be noted that as Stoke Convenience Store was subject to a one month closure order dated 3.12.24, the closure order no longer has effect and so the “relevant time” set out above applies.

Informative/s -

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| Background Papers: | Application Ref PR202412-359790 Licensing Act 2003, as amended Licensing Policy – As adopted March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended. |
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