

APPLICATION TO REVIEW PREMISES LICENCE – LICENSING ACT 2003

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Wards Affected: Burgess Hill
Key Decision: No
Report To: Liquor Licensing Panel

Purpose of Report

- 1 To provide information to enable the Panel to determine an application to review the Premises Licence at Arya Food and Wine in Burgess Hill submitted by West Sussex Trading Standards.

Summary

- 2 An application, attached at Appendix 1, pursuant to Section 51 Licensing Act 2003, has been made by West Sussex Trading Standards for the review of a Premises Licence, namely Arya Food and Wine, 12 Station Road, Burgess Hill, RH15 9DQ. The grounds for the review relate to the licensing objectives of the Prevention of Crime and Disorder and the Protection of Children from Harm.
 - 3 The application cites the sale of alcohol to a child during a test purchase operation conducted by Trading Standards on the 8th February 2023. Two further Responsible Authorities, Sussex Police and WSCC Public Health, have submitted representations in support of the review application.
 - 4 The Panel must determine this matter on the evidence presented to it during the hearing having due regard to the Licensing Act 2003, MSDC Licensing Policy, and the Home Office Guidance issued under Section 182 Licensing Act 2003.
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Background

- 5 The premises concerned is at 12 Station Road, Burgess Hill, RH15 9DQ and is known as Arya Food and Wine. It has been licensed for the sale of alcohol for consumption off the premises since April 2010. The Premises Licence was transferred to the current premises licence holder, Mr Maheshkumar Chaudhari on the 8th June 2015. Mr Chaudhari is also the Designated Premises Supervisor.
- 6 The current Premises Licence is attached at Appendix 2. The premises is licensed for the following licensable activities:

Licensable Activity	Timings
Sale by retail of alcohol	Monday to Saturday 10:00 – 22:30
	Sunday 12:00 - 21:00

- 7 The opening hours of the premises are:
Monday to Saturday 10:00 - 22:30
Sunday 12:00 - 21:00
- 8 The premises operates as a convenience store and is located in Burgess Hill Town Centre near to the Railway Station. Photos of the store are attached at Appendix 3.

9 There are a number of conditions currently attached to the licence in addition to the mandatory licence conditions. These are:

Conditions consistent with the operating schedule

Proof of Age and Challenge 18 years /21 years /25 years

- All cashiers/staff will be trained to require evidence of age from any person seeking to buy alcohol and appearing to the cashier to be under the age of 21. The evidence shall be photographic, such as passport or photographic driving licence or PASS (National Proof of Age Standards Scheme) approved documentation.

CCTV

- A CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose.
- The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
- Notices informing customers of the operation of the system shall be prominently displayed.
- The system will incorporate a recording facility and any recording shall be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection on request.
- If the premises are using a video recording system, the cassette tape shall be used on no more than 12 occasions.

10 West Sussex Trading Standards have applied for a review of the premises licence based on the sale of alcohol to a child that took place during a test purchasing operation that they conducted on the 8th February 2023.

11 Trading Standards cite that they previously received information of underage sales at the premises; they subsequently conducted a visit to the store in September 2022 when advice was given to Mr Chaudhari regarding the sale of age restricted products and provided further advice to ensure staff were correctly trained. A copy of this advice was provided to Mr Chaudhari. On the 8th February 2023 staff at the store sold alcohol to a child during a test purchasing operation.

12 Trading Standards contend that there is a failure of the management to promote the licensing objectives and they consider that a review of the premises licence is necessary to limit further criminal activity by the licence holder and to act as a deterrent against such illegal conduct.

13 Full details of the Trading Standards investigation are attached to the report at Appendix 4.

14 Trading Standards submit that the licence holder has failed in their responsibilities to protect children from harm and request that consideration is given to suspending the licence for a period of 3 months.

15 The review application was correctly advertised at the site between the 13th April 2023 and the 10th May 2023.

16 Sussex Police have submitted representations in support of the application to review the premises licence on the grounds of the Prevention of Crime and Disorder and the Protection of Children from Harm. These are attached at Appendix 5. In their representation they state that they are particularly concerned that in this case alcohol was sold to a child during a test purchase exercise. They note that prior to the test purchase advice was given to the Management of the premises by Trading Standards and that this advice revolved around underage sales of alcohol and the sale of other

age restricted products. They also recommend to the Committee that they consider a suspension period of 3 months is appropriate in this case.

In addition to a suspension of the premises licence, Sussex Police invite the Committee to update the current premises licence conditions by replacing all the existing conditions at Annex 2 with modern conditions. A schedule of these conditions is attached at Appendix 6.

- 17 WSCC Public Health have submitted representations in support of the application on the grounds of the Prevention of Crime and Disorder and the Protection of Children from Harm. These are attached in full at Appendix 7. In their representation they state that sale of alcohol to children is of extreme concern, considering the strong evidence demonstrating the harms caused by alcohol to children and young people. They highlight that the premises licence holder had recently received both verbal and written advice about the sale of age restricted products, including advice on staff training. The subsequent sale of alcohol to a person under the age of 18, as part of a Trading Standards 'test purchase' operation, indicates that this advice had not been acted upon and suggests a disregard for the law. They state that they are disappointed to learn about the sale of alcohol to a child and endorse the recommendations made in the review application by Trading Standards. They further state that given the harm caused to children and young people by alcohol in West Sussex and high rate of alcohol harm in young people in Mid Sussex District, it is especially disappointing to note that staff at Arya Food & Wine sold alcohol to a child. Whilst the licensee confirms that a Challenge 25 policy is in place, this is not being adhered and suggests a lack of effective staff training. In Mid Sussex alcohol-specific hospital admissions among under 18s have shown an increase since 2016/17 and the comparable rate for the district is 35.2 admissions per 100,000 under 18s which is also above the rate for England.

They are supportive of the recommendations of Trading Standards and would also invite the Committee to consider additional conditions being attached to the current licence. These are outlined in Appendix 6.

Legal Context

- 18 The review has been applied for under Section 51(1) of the Licensing Act 2003.
- 19 Section 52 deals with the determination of the review.
- (1) This section applies where—
- (a) the relevant licensing authority receives an application made in accordance with section 51,
- (b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and
- (c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.
- (2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.
- (3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.
- (4) The steps are—
- (a) to modify the conditions of the licence;

- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) Subsection (3) is subject to sections 19 to 21 (requirement to include certain conditions in premises licences).

(6) Where the authority takes a step mentioned in subsection (4)(a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

20 Licensing Objectives

The Licensing Act 2003 requires representations to address the four licensing Objectives which are:

1. Prevention of crime and disorder
2. Promotion of public safety
3. Prevention of public nuisance
4. Protection of children from harm

21 Guidance Issued Under Section 182 of the Licensing Act 2003

11.9

Responsible authorities and other persons may make representations in respect of an application to review a premises licence or club premises certificate. They must be relevant (i.e., relate to one or more of the licensing objectives) and, in the case of other persons, must not be frivolous or vexatious. Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.

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.

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;
- 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 to address the causes of concern that instigated the review.

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:

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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;
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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.

Other Options Considered

- 22 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence.

Financial Implications

- 23 The final decision made by the Panel in this matter is subject to appeal in the Magistrates' Court by any party to the proceedings.

Other Material Implications

- 24 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry on a licensable activity from any premises otherwise than under and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 25 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

Sustainability Implications

- 26 None

Background Papers

Appendix 1 – Application for review

Appendix 2 – Current Premises Licence

Appendix 3 – Site Photos

Appendix 4 – Papers relating to Trading Standards Investigation

Appendix 5 – Sussex Police Representation

Appendix 6 – Sussex Police and WSCC Public Health requested conditions

Appendix 7 – WSCC Public Health Representation

Appendix 8 – Hearing Procedure