

APPLICATION TO REVIEW PREMISES LICENCE – LICENSING ACT 2003

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Wards Affected: Haywards Heath
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 K & A Enterprise in Haywards Heath 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 K & A Enterprise, 118 South Road, Haywards Heath, RH16 4LT. The grounds for the review relate to the licensing objectives of the Prevention of Crime and Disorder, the Promotion of Public Safety and the Protection of Children from Harm.
 - 3 The application cites the receipt of information relating to the sale of under-age products to children, the sale of alcohol to a child during a test purchase operation on the 2nd September 2021, and a further 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 118 South Road, Haywards Heath, West Sussex, RH16 4LT and is known as K & A Enterprise. It has been licensed for the sale of alcohol for consumption off the premises since December 2008 under Licence Number PWA0348.
- 6 At the time of the incidents referred to within the review application submitted by Trading Standards the Premises Licence Holder and Designated Premises Supervisor was Mr Kandeepan Kandhasamy of 118A South Road, Haywards Heath.
- 7 The Panel should note that on the 5th May 2023, during the Trading Standards investigation into these matters and prior to the submission of this review application, the Premises Licence Holder and the Designated Premises Supervisor was transferred from Mr Kandeepan Kandhasamy to Mr Selvakkumar Karaimuthu, who also gives the address of 118A South Road, Haywards Heath.
- 8 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	Everyday 06:00-01:00

9 The opening hours of the premises are:

Everyday 06:00-01:00

10 The premises operates as a convenience store and is located in Haywards Heath Town Centre. Photos of the store are attached at Appendix 3.

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

Conditions consistent with the operating schedule

The premises will operate a "Challenge 25" policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram. The list of recommended forms of ID may be amended or revised with the prior written agreement of Sussex Police, the Licensing Authority and Trading Standards without the need to amend the licence or conditions attaching to it.

The premises shall at all times maintain and operate a sales refusals log and an incident log will be kept to record all refusals and incidents of crime or disorder. These shall be reviewed and signed by the Designated Premises Supervisor at intervals of no more than four (4) weeks. Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises. These records shall be kept for a minimum of twenty four (24) months, and made immediately available upon request to the Local Authority Licensing Officers and Sussex Police Officers or Licensing staff.

The Premises Licence Holder shall ensure that all staff members engaged or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products:

- The lawful selling of age restricted products
- Refusing the sale of alcohol to a person who is drunk

Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.

All such training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.

12 The Panel will note the Premises Licence contains duplicate and out of date conditions that have not previously been removed from the licence. If considered appropriate, the Panel is invited to consider an updated schedule of conditions, and this schedule is attached at Appendix 4.

13 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.

14 Trading Standards further cite that the premises has previously come to their notice in relation to sales of age restricted products to children. This related to a previous sale of alcohol to a child

during a test purchase operation on the 3rd of September 2021. This was dealt with by way of a warning letter to Mr Kandhasamy.

They detail further information that Trading Standards had received concerning the sale of age restricted products, vapes and alcohol products to children.

The review application details numerous visits to the premises by Trading Standards Officers providing underage sales prevention advice over the previous years. Copies of this advice had previously been provided to Mr Kandhasamy.

They also cite issues surrounding food safety and labelling that was discovered during an inspection visit in August 2019.

15 Full details of the Trading Standards investigation and supporting documentation are attached to the report at Appendix 5.

16 Trading Standards submit that they do not believe the licensing objectives are being continually upheld at these premises and deem it both proportionate and necessary to invite the committee to consider a review of the premises licence, to limit further criminal activity by this licence holder and to act as a deterrent to other operators considering such illegal conduct.

As underage prevention advice had been provided just before the sale of alcohol was made to a Trading Standards volunteer, the premises had been given advice on several occasions prior and they had failed a similar test purchase previously, they suggest an appropriate outcome of the review would be a revocation of the alcohol licence.

17 The review application was correctly advertised at the site between the 15th of June 2023 and 12th of July 2023.

18 The Panel will note that the current Premises Licence holder and Designated Premises Supervisor is now Mr Selvakkumar Karaimuthu. On the 14th of June 2023 the Licencing Team visited the premises and spoke with Mr Karaimuthu regarding the review application. He initially stated that the previous owner, Mr Kandhasamy no longer had any involvement with the premises. As part of the visit the current DPS authorisation and training records were inspected. These showed Mr Kandhasamy was recorded as an employee at the premises. He was on the DPS authorisation and also had training records in place. Mr Karaimuthu then stated that Mr Kandhasamy helped out in the shop at times. Copies of these documents are at Appendix 6.

The trading name of the premises remains unchanged as K & A Enterprise.

19 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 7.

They draw the Panels attention to Sections 11.27 and 11.28 of the Section 182 Statutory Guidance and highlight that the licence has appropriate conditions in place but despite this the licensing objectives have not been upheld.

The Police further state that they cannot see the benefit of further conditions being added to the licence and they support the representation from Trading Standards regarding consideration of the revocation of the premises licence.

20 WSCC Public Health has submitted representations in support of the application on the grounds of the Prevention of Crime and Disorder, the Promotion of Public Safety and the Protection of Children from Harm. These are attached in full at Appendix 8.

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 just a matter of weeks prior to the failed test purchase operation.

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 provide supporting evidence concerning 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 in particular that in Mid Sussex alcohol-specific admissions among under 18s have also 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 rates for England overall. They state that given the harm caused to children and young people by alcohol in West Sussex and the high rate of alcohol harm in young people in Mid Sussex District, it is especially disappointing to note that staff at K & A Enterprise Ltd. sold alcohol to a child.

They highlight the fact that this is not the first occasion that staff at K & A Enterprise Ltd has made a sale of alcohol to a person under the age of 18. A sale of alcohol to a person under the age of 18 was made as part of a Trading Standard 'test purchase' in September 2021, for which a Warning Letter was issued. From a Public Health perspective this suggests further still that the advice provided has not been acted upon and a disregard for the law. Whilst the licensee confirmed that a 'Challenge 25 Policy' is in place during an advice visit, this is not being adhered to. The fact that the refusals log and training records had not been adequately completed also suggests a lack of effective staff training.

They are supportive of the recommendations of Trading Standards which seek to limit further criminal activity.

Legal Context

- 21 The review has been applied for under Section 51(1) of the Licensing Act 2003.
- 22 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.

23 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

24 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.

11.16

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 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.

11.18

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;
- 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

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

Financial Implications

- 26 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

- 27 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.

- 28 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.

Equality and customer service implications

- 29 None

Sustainability Implications

- 30 None

Background Papers

Appendix 1 – Application for review

Appendix 2 – Current Premises Licence

Appendix 3 – Site Photos

Appendix 4 – Schedule of revised conditions

Appendix 5 – Papers relating to Trading Standards Investigation

Appendix 6 – Records for Mr Kandhasamy

Appendix 7 – Sussex Police Representation

Appendix 8 – WSCC Public Health Representation

Appendix 9 – Hearing Procedure