

## APPLICATION TO REVIEW PREMISES LICENCE – LICENSING ACT 2003

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Wards Affected: Copthorne and Worth  
Key Decision No  
Report To: Liquor Licensing Panel - 22 September 2023

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### Purpose of Report

- 1 To provide information in order that the Panel can determine a review of a Premises Licence 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 at Morrisons Daily, Church Road, Copthorne, West Sussex, RH10 3RA. 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 review cites the sale of alcohol to a child during a test purchase operation conducted by Trading Standards on the 8<sup>th</sup> of February 2023 and the subsequent enquiries that were made into the incident. 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 Church Road, Copthorne, West Sussex, RH10 3RA and is currently known as Morrisons Daily. It has been licensed for the sale of alcohol for consumption off the premises since November 2005 under Licence Number PWA0095. Prior to this date the premises benefitted from a Justices Licence issued under the Licensing Act 1964.
- 6 The Premises Licence was transferred to the current premises licence holder, Alliance Property Holdings Limited, Hilmore House, Gain Lane, Bradford, West Yorkshire, BD3 7DL on the 10<sup>th</sup> May 2022 when the premises was formerly known as McColls.
- 7 At the time of the incidents referred to within the review application submitted by Trading Standards, the Designated Premises Supervisor (DPS) was Sarah Mahoney. She was employed at a different branch within the company and was not permanently located at this store. The DPS was changed on the 4<sup>th</sup> of August 2023 to an Andrew Vickers.

- 8 The current Premises Licence is attached at Appendix 2. The premises is currently licensed for the following licensable activities:

<b>Licensable Activity</b>	<b>Timings</b>
Sale by retail of alcohol	Sunday 10:00 - 22:30 Monday to Saturday 08:00 - 23:00

- 9 The current opening hours of the premises are:
- Sunday 10:00 - 22:30  
Monday to Saturday 08:00 - 23:00
- 10 The premises operates as a convenience store and is located within Cophorne village. Photos of the store are attached at Appendix 3.
- 11 There are currently no extra conditions attached to the licence in addition to the mandatory licence conditions.
- 12 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 8<sup>th</sup> of February 2023.
- 13 They cite that they received information regarding underage sales of alcohol and vapes. An advice visit was made to the store in August 2022 where they spoke to the manager at that time, Ms Kirstie East, regarding the sale of age restricted products, provided advice to ensure staff were correctly trained and a copy of this advice was provided to Ms East. On the 8<sup>th</sup> of February 2023 staff at the store sold alcohol to a child during a test purchase operation.
- 14 When Trading Standards officers spoke to the staff member who failed the test purchase, he stated that he had received training the previous week but did not know what the 'Think 25' policy was or what the refusals log was.
- 15 On the 22<sup>nd</sup> of May 2023 further questions were put by Trading Standards to a representative of the Company but there was no response. Further attempts were made and on the 9<sup>th</sup> of June they were informed by the current store manager that Ms East no longer worked for Morrisons Daily, but he confirmed that they had received the additional questions and would reply in the next 7 working days from that date.
- 16 On the 12<sup>th</sup> of June 2023, the current manager called the Trading Standards officer investigating the case and explained that the member of staff who failed the test purchase had been fired and it has been sorted. The Trading Standards officer asked him to respond to the questions that were put forward and confirm this information There was no further response from Morrisons Daily since the 12<sup>th</sup> of June 2023 leading to the submission of the application the review the premises licence.
- 17 Trading Standards state that in view of the sale and the subsequent lack of engagement from the business in response to their contact with them, they do not believe the licensing objectives are being continually upheld, 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.

- 18 They further contend that the continued sale/supply of alcohol by the premises licence holder in the circumstances outlined above is a breach of the licencing objectives and the premises has demonstrated a particular failure in its ongoing responsibilities to protect children from harm. As underage age advice had been provided before the sale of alcohol was made to a Trading Standards volunteer, the Responsible Authority suggests an appropriate outcome would be a three-month suspension of the Premises Licence.
- 19 Full details of the Trading Standards investigation are attached to the report at Appendix 4.
- 20 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. 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 by adding modern conditions. A schedule of these conditions is attached at Appendix 6.

- 21 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 had received an advice visit from two Trading Standards officers. They note that despite the member of staff confirming that they had received training, he was unable to explain the 'Challenge 25' policy. The fact that he was also completely unaware of a refusals log, demonstrates that staff training at the premises was completely insufficient to uphold the licencing objectives. They further state that it is disappointing that representatives of the company have not responded in a timely manner to further questions put forward by Trading Standards. Given the serious nature of this offence and the harm caused to children by alcohol, this suggests that the premises is not taking seriously their responsibility to uphold the Licencing Objectives.

They highlight that 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 rates for England overall.

Having considered the information provided in the review, West Sussex Public Health state they are supportive of the recommendation of Trading Standards to suspend the premises alcohol licence for 3 months, as this will provide sufficient time for staff retraining, and would also invite the Committee to consider additional conditions being attached to the current licence. These are also outlined in Appendix 6.

## **Legal Context**

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

23 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 [F1 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.

## 24 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. Prevention of Harm to children and young persons

## 25 Guidance Issued Under Section 182 of the Licensing Act 2003

### 2.34

Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively.

### 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

cooperation. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

#### 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**

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

### **Financial Implications**

- 27 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**

- 28 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise than under and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 29 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**

- 30 None

### **Background Papers**

- Appendix 1 – Application for Review  
Appendix 2 – Current Premises Licence  
Appendix 3 – Site Photos  
Appendix 4 – Papers relating to Trading Standards application

Appendix 5 – Sussex Police Representation  
Appendix 6 – Proposed additional conditions  
Appendix 7 – WSCC Public Health Representation