

## APPLICATION TO REVIEW PREMISES LICENCE – LICENSING ACT 2003

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Wards Affected: Haywards Heath - North  
Key Decision No  
Report To: Liquor Licensing Panel

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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 KK News Ltd, Trading as Sparks News, 56 Queens Road, Haywards Heath, RH16 1EE. 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 24<sup>th</sup> of May 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 56 Queens Road, Haywards Heath, RH16 1EE and is currently known as Sparks News. It has been licensed for the sale of alcohol for consumption off the premises since March 2017 under Licence Number PWA0551.
- 6 The Premises Licence holder and the Designated Premises Supervisor (DPS) is Ms Lakminy Thambu Kandasamy, of 56 Queens Road, Haywards Heath, RH16 1EE.
- 7 The current Premises Licence and conditions is attached at Appendix 2.

The premises is currently licensed for the following licensable activities:

Licensable Activity	Timings
Sale by retail of alcohol	Everyday 06:00-20:30

8 The current opening hours of the premises are:

Everyday: 05:30 – 20:30

9 The premises operates as a local convenience store/newsagent in Haywards Heath within a mainly residential area. Photos of the store are attached at Appendix 3.

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

The premises will operate an age verification policy set at a minimum of 25 years, whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. Signage advertising the policy will be displayed at the point of sale as a minimum.

Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally to cover the servery, alcohol storage area and the entrance to the premises as a minimum. The system shall be on and recording at all times the premises licence is in operation.

- The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.
- CCTV footage will be stored for a minimum of 31 days.
- The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.
- The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.
- Subject to Data Protection guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk for the police without difficulty or delay and without charge to Sussex Police.

The premises shall at all times maintain and operate a sales refusals log and an incident log book. These will be kept to record all refusals and incidents of crime or disorder. These records shall be kept for a minimum of twelve months and made immediately available upon request to the Local Authority Licensing Officers and Sussex Police Officers or Licensing staff.

All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive full training pertinent to the Licensing Act, specifically in regard age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs. Induction training must be completed and refresher training thereafter at intervals of no more than six months. All restricted sales training undertaken by staff members shall be fully documented and signed by the employee and the DPS. All training records shall be made immediately available upon request to the Local Authority Licensing Officers and Sussex Police Officers or Licensing staff.

- 11 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 24<sup>th</sup> of May 2024.
- 12 They cite that they had previously received a report on the 30<sup>th</sup> of January 2023 that Sparks News was openly selling vapes and liquids to children in Oathall College school uniform, every day after school. The report also stated that this was causing litter and unsocial behaviour for local residents.
- They received three further complaints at the end of March 2023 of the venue selling alcohol and e-cigarettes to 15- and 16-year-old children.
- Trading Standards reference a visit to the premises by Mid Sussex District Licensing Team on the 30<sup>th</sup> of March 2023 when a programmed inspection took place, and an advice letter was sent to the DPS following the inspection.
- On the 3<sup>rd</sup> of April 2023 Trading Standards completed a visit to the premises where advice was given to Ms Kandasamy regarding underage sales, and she was advised that test purchases would take place and if failed a licence review would be applied for. A follow up advice letter was sent to the premises.
- On the 24<sup>th</sup> of May 2023 an employee at the store sold alcohol to a child during the test purchase.
- 13 When Trading Standards officers spoke to the employee, they commented that he was hard of hearing and his command of English was limited as it did not appear to be his first language. He did seem to understand what underage sales were but thought the volunteer was 18.
- 14 KK News Ltd director Ms Kandasamy responded to a formal written interview request and stated that both herself and a staff member have personal licences. Miss Kandasamy confirmed that she is the owner and responsible for the day to day running of the business.
- 15 West Sussex Trading Standards contend that they do not have confidence that the licensing objectives are or will be promoted by the continuation of licensable activities at these premises. They comment that despite being trained with a personal licence since 25<sup>th</sup> June 2008 and being a DPS at Sparks News since 11<sup>th</sup> March 2017, Ms Kandasamy had not put adequate due diligence and procedures in place until Trading Standards visited on 3<sup>rd</sup> April 2023. They highlight that Ms Kandasamy left her staff untrained for years after they joined the business, allowing them to sell age restricted products without knowledge of how to ensure children are protected from harm. The Challenge 25 policy is a mandatory condition of the premises licence, and it has not been complied with. They state that there has been a failure of the management to promote the licensing objectives, the sale/supply alcohol in the circumstances outlined is a breach of the licensing objectives and the licensee has failed in their responsibilities to protect children from harm. Therefore, Trading Standards suggest to the Panel an appropriate outcome of the review would be a revocation of the premises licence.
- 16 Full details of the Trading Standards investigation are attached to the report at Appendix 4.

- 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 5. 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 MSDC Licensing Team and from a Trading Standards officer prior to the test purchase.

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.

They state that it is disappointing that despite previous advice provided by Trading Standards, alcohol was sold to a child. 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.

Having considered the information provided in the review, West Sussex Public Health state they are supportive of the recommendations of Trading Standards which seek to limit further criminal activity and to promote the licencing objectives.

- 18 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 6.

They detail that Sussex Police received a report on the 27<sup>th</sup> of March 2023 from an informant stating that her son of 15 years of age had been sold alcohol and vapes from the premises on the 25<sup>th</sup> of March 2023. As a result of this information a joint visit by the Police and Mid Sussex District Council Licensing team was carried out on the 30<sup>th</sup> of March 2023. During the visit the DPS Ms Kandasamy was present along with another member of staff. She was spoken to regarding the allegation and words of advice was given regarding this matter. It appeared that the DPS was not at the premises at the time of the reported incident.

The following observations were made whilst the officers were at the Licensed premises:

- The DPS could not produce part A of the Premises Licence.
- Part B of the Premises Licence was on display in the store.
- The DPS could not produce a DPS authorisation form.
- Challenge 25 (age verification) displayed.
- CCTV was working although the time was incorrect.
- Training records for the member of staff working in the store at the time of the visit could not be produced. No refresher training documented which as of the training condition, should be carried out at intervals of no more than 6 months.

To assist the DPS in managing the issues raised and upholding the Licensing objectives, documentation was then passed to the DPS to help rectify the

issues raised during the visit. A further visit to the premises was carried out on the 17<sup>th</sup> of April 2023 by Mid Sussex District Council Licensing team. The result of the visit was that the premises had rectified all the issues raised.

In the representation they state that they are particularly concerned that in this case alcohol was sold to a child during a test purchase exercise and that prior to the test purchase exercise carried out by Trading Standards, advice around the sale of age restricted products was given to the Management of the premises by a number of Responsible Authorities.

Sussex Police support the review application and recommend to the Committee that they consider a suspension period of three months is appropriate. In addition to a suspension of the premises licence, Sussex Police invite the Committee to consider updating the premises licence conditions by replacing all the existing conditions in the operating schedule of the licence with proposed conditions detailed at Appendix 7.

### **Legal Context**

- 19 The review has been applied for under Section 51(1) of the Licensing Act 2003.
- 20 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 [F1appropriate] 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.

## 21 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

## 22 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 co-operation. 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.

#### 11.23

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

#### 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**



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

### **Financial Implications**

- 24 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**

- 25 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.
- 26 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**

- 27 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 – WSCC Public Health Representation
- Appendix 6 – Sussex Police Representation
- Appendix 7 – Police suggested conditions