

LICENSING ACT SUB COMMITTEE

Licensing Act 2003 Premise Licence Review – Morecambe Off-Licence, 34 Queen Street, Morecambe Determination of Application for the Review of the Premise Licence 16th April 2019

Report of Licensing Enforcement Officer

PURPOSE OF REPORT

To enable Members to determine an application for a review of a Premise Licence under Section 51 of the Licensing Act 2003 submitted by Sam McConnell on behalf of Lancashire County Council Trading Standards Service.

The report is public

RECOMMENDATIONS

The Sub-Committee is requested to consider the application from Lancashire County Council Trading Standards Service for the review of the premise licence, and any submissions made by the premises licence holder.

In accordance with Section 52 (3) and (4) of the Licensing Act 2003, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (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

The matter for decision, therefore, is which, if any, of these steps should be taken.

1.0 Introduction

- 1.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

- 1.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives .
- 1.3 The Principal Officer of Lancashire Trading Standards Service has submitted an application for review of a premises licence under Section 51 of the Licensing Act 2003. The application relates to Morecambe Off-Licence, 34 Queen Street, Morecambe. A copy of the application is at Appendix No. 1. The grounds for submitting the review are based on one of the four licensing objectives, namely;
- The prevention of crime and disorder
- 1.4 A copy of the premises licence for Morecambe Off-Licence is attached at Appendix No. 2. This licence was granted to the premises on 4th July 2018 and details the following licensable activity:
- Sale & Supply of Alcohol (Monday – Sunday) 07:00 hours to 23:00 hours
- 1.5 In accordance with the relevant Regulations, the parties have been given Notice of the Hearing. A copy of the Notice of Hearing is attached for Members attention at Appendix No. 3.

2.0 Legal background to Review Application

- 2.1 Under Section 51 (1) of the Licensing Act 2003, a responsible authority or other person may apply to the licensing authority for the review of a licence.

The grounds for review must relate to one or more of the licensing objectives and as Members will be aware, these are:

- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance and
 - the protection of children from harm
- 2.2 An application for review must be copied to the premises licence holder and to the responsible authorities. Once such an application is received, the licensing authority must place a notice at the premises, and there is then a period of 28 days during which representations may be made to the licensing authority.
- 2.3 A copy of the notice which was displayed at the premises during the 28 day period is attached at Appendix No. 4. Licensing Enforcement Officers made occasional checks throughout the 28 day period to satisfy that the notice was still in place.
- 2.4 Members are reminded that representations can either be in support of or against an application for review of a premises licence. The representation must relate to the likely impact of the grant of the licence in relation to one or more of the four licensing objectives, namely:
- Public Safety
 - The prevention of crime and disorder
 - The protection of children from harm
 - Prevention of public nuisance

During the 28 day statutory period a representation was received from PC2338 Andrew Taylor of Lancashire Constabulary in support of the application and this is attached at Appendix No. 5.

The Police representation concerns sales undertaken by a male known as Kareem Muhameed Mahmud who was alone in the premises at the time of their visit with Trading Standards Officers on 22nd January 2019. Mr Mahmud was not in possession of a personal alcohol licence or received authorisation to undertake alcohol sales from the Designated Premises Supervisor and denied working there even though he was in possession of keys to the Off-Licence. Similarly, he denied knowing the shop owner and Designated Premises Supervisor Mr Osman Ahmed Said when he subsequently arrived at the premises.

No representations were received in support of the Licence Holder.

3.0 **Background information provided by Licensing Authority**

The application for review of the premise licence submitted by Lancashire County Council Trading Standards Service is on the grounds that the licensing objective relating to the prevention of crime and disorder is not being observed at Morecambe Off-Licence, 34 Queen Street, Morecambe.

The Trading Standards Service received numerous complaints in relation to the sale and supply of illicit tobacco products from the premises. Three separate test purchase operations of illicit tobacco products were conducted in November and December 2018. Consequently an inspection to the premises under warrant was conducted on 22nd January 2019 by Trading Standards Officers along with Lancashire Constabulary Licensing Officers where illicit tobacco products were seized.

CCTV at the premises was in operation at the time although the male behind the shop counter, Mr Mahmud, claimed not to know how to work it or anything about the refusal book or underage sales. Officers searched behind the counter but were unable to find any records whatsoever relating to the underage sale of alcohol such as training records, refusals book or a relevant policy document which is a breach of the conditions attached to the premises licence.

Mr Mahmud refused to disclose the details of the owner of the premises and the CCTV was duly seized. Lancaster Police Licensing Officer PC Andy Taylor advised Mr Mahmud that no alcohol could be sold at the premises until new CCTV had been obtained and installed.

During the inspection the owner of the premises Mr Said arrived but similarly was unable to produce any documentation in respect of underage sales or training records which again is a clear breach of his premise licence conditions.

A quantity of illicit tobacco was discovered at the premises and subsequently seized.

Further visits were then undertaken at the premises within the following week where alcohol was sold despite implicit instruction from Police not to do so without functioning CCTV. Additionally counterfeit cigarettes were sold and supplied.

On 5th February 2019 a further visit to the premises occurred with representatives from Trading Standards, Lancashire Constabulary and Lancaster City Council, where new CCTV was found to have been installed although the shop still did not have a

refusals book or any training records available. However, there were no infringing tobacco products found at the premises on this occasion.

A copy of the Community Impact Statement received from the Police is attached at Appendix No. 6 to this report.

3.1 **Government Guidance under Section 182 of the Licensing Act 2003 in relation to a review hearing following a representation involving Crime and Disorder**

Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

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 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 knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

It is envisaged that licensing authorities, the police 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.

3.2 Government Guidance under Section 182 of the Licensing Act 2003 in relation to the Prevention of Crime and Disorder is attached at Appendix No. 7 to this report.

3.3 The relevant parts of the Council's Statement of Licensing Policy are set out at Appendix No. 8.

3.4 **Natural Justice and Human Rights**

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

4.0 **Conclusion**

The management of Morecambe Off-Licence have displayed scant regard to the conditions imposed on the premises licence and been evasive when questioned by Authorised Officers about the running of the business and subsequently ignored clear instructions given following their Multi-Agency visit.

Moreover, counterfeit cigarettes were sold to officers from Lancashire Trading Standards Service on several occasions during test purchase operations and a large number of illicit tobacco products were discovered and seized at the premises during their visit on 22nd January 2019. Alarming, further sales of counterfeit cigarettes were made to Officers on a subsequent test purchase operation.

Members should consider the application for review of the premises licence and any steps they consider necessary for the promotion of the licensing objectives.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
None.	
FINANCIAL IMPLICATIONS	
Financial Services have not been consulted as there are no financial implications.	
LEGAL IMPLICATIONS	
Legal implications are contained within the report, In accordance with Section 181 and Schedule 5 of the Licensing Act 2003, the parties have a right of appeal to the magistrates court within 21 days	
BACKGROUND PAPERS	Contact Officer: David Eglin Telephone: 01524 582387 E-mail: deglin@lancaster.gov.uk Ref: DWE
None	