

## Application for review of premises licence

### Committee

Licensing Sub Committee

### Officer Contact

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### Papers with report

- Copy of Review application and relevant documents from Sgt Ian Meens
- Copy of letter and evidence from Martin King in support of the review
- Copy of email received from Cllr Dominic Gilham in support of the review
- Copy of the premises licence
- List of responsible authorities
- Map of the area

### Ward(s) affected

West Drayton

### SUMMARY

To consider an application for a Review of a premises licence under Part 3 Section 51 of the Licensing Act 2003 made by Sgt Ian Meens on behalf of the Metropolitan Police Service in respect of **West Drayton Food & Wine, 19 Station Road, West Drayton UB7 7BT.**

### RECOMMENDATION

**That the Licensing Sub Committee determine the application.**

### INFORMATION

- 1.1 An application for a Review of the premises licence for West Drayton Food & Wine made by Sgt Ian Meens on behalf of the Metropolitan Police Service, was received on 24<sup>th</sup> June 2011 on the grounds of:-

**Prevention of crime and disorder – the sale and display for sale counterfeit and non-duty paid goods**

**The breach of licensing conditions**

**Public Safety – the sale of counterfeit goods with the possibility of risk to public health**

- 1.2 The premises is a single unit shop selling groceries and alcohol. The premises licence was issued to Mr Pal Singh Kapoor on 13<sup>th</sup> May 2009.
- 1.3 Sgt Meens sent copies of the application to all the Responsible Authorities as required by the Licensing Act 2003. A copy of the application is annexed to this report as **Appendix 1.**
- 1.4 In accordance with the legislation, a poster giving details of the application was displayed at the premises for 28 days and checks were made by the council's Licensing Officers to ensure that the poster was still correctly displayed.

- 1.5 As required by the legislation, a poster was also displayed on the Civic Centre notice board for 28 days and the details were listed on the council's website.
- 1.6 The legislation provides for other Responsible Authorities and/or interested parties such as residents to support the Review application. The period for Responsible Authorities and local residents to support the application expired on 22<sup>nd</sup> July 2011. One letter of support was received from the Council's Trading Standards Officer and one email of support was received from Councillor Dominic Gilham.

These letters of support are annexed to this report as **Appendix 2 and Appendix 3.**

## 2.0 **LEGAL IMPLICATIONS**

The licensing authority must review the premises licence where it is alleged in an application for review by a Responsible Authority or an Interested Party that any of the licensing objectives are being undermined.

### 2.1 "Relevant representations" are those which :–

- Are relevant to one or more of the licensing objectives;
- Are made by a responsible authority or an interested party within the prescribed period;
- Are made by the holder of the premises licence in response to an application for a review of the said premises
- Have not been withdrawn; and
- If made by an interested party, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

The four licensing objectives are –

- The prevention of crime and disorder;
- Public safety;
- The prevention of nuisance; and
- The protection of children from harm

Each objective must be considered to be of equal importance

- 2.2 The Licensing Sub-Committee must also consider the London Borough of Hillingdon's licensing policy when what action, if any, to institute. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.

Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act must prevail.

- 2.3 Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

- 2.4 The sub-committee may decide to: –
- Take no action
  - Modify the conditions of the licence by altering, omitting or adding any condition;
  - Issue a formal warning, recommending an improvement within a specified time frame;
  - Exclude a licensable activities from the scope of the licence;
  - Remove the designated premises supervisor;
  - Suspend the licence for a period not exceeding three months; or
  - Revoke the licence.

For this purpose the conditions of a premises licence are modified if any of them are altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

- 2.5 The Sub-Committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

In deciding what remedial action if any it should take, the Sub-Committee must direct it's mind to the causes or concerns which the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.

It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

## 2.6 **Conditions**

Conditions will not be necessary if they duplicate a current statutory requirement..

Members are also referred to the Home Office guidance on conditions, specifically section 10.7 and Annexe D.

The Statutory Guidance states that only necessary, proportionate and enforceable conditions, which promote one or more of the licensing objectives, should be attached to the licence.

The Licensing Authority may therefore only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the Review application (paragraph 10.11), and should avoid straying into undisputed areas (paragraph 9.24). Statutory Guidance also states that the pool of conditions that are supplied by the Secretary of State should not be applied universally irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations.

## 2.6 **Notification of Determination**

Where the authority determines an application for review it must notify the determination and reasons for making it to: –

- The holder of the licence;
- Any person who made relevant representations;
- The chief officer of police for the area (or each police area) in which the premises are situated

## 2.8 The Role of the Licensing Sub-Committee

Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

Members should note that the Licensing Sub-Committee is meeting on this occasion solely to **perform the role of licensing authority**. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.

Under the Human Rights Act 1998, the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.

Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

### 3.0 **FINANCIAL IMPLICATIONS**

Members should be aware that the Planning, Environment and Community Services does not have a budget provision for costs, should the applicant be successful in appealing to the Court(s) against a decision of the Council. In the event that a Court was to uphold an appeal, officers would need to identify how the costs would be funded before action could be taken in order to comply with Council financial policy.

### **RELEVANT DOCUMENTS**

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- Copy of letter and evidence from Martin King in support of the review
- Copy of email received from Cllr Dominic Gilham in support of the review
- Copy of the premises licence

### **BACKGROUND DOCUMENTS:**

The Licensing Act 2003

Guidance Under Section 182 of the Licensing Act

Statement of Licensing Policy