

REPORT TO: LICENSING SUB-COMMITTEE

DATE: 6 MARCH 2018

TITLE: APPLICATION FOR A REVIEW OF THE PREMISES LICENCE - STREET CORNER SHOP

LEAD OFFICER(S): DAVID TAYLOR, PRINCIPAL ENVIRONMENTAL HEALTH OFFICER (01279) 446148

CONTRIBUTING OFFICER: DEBBIE WRIGHT, LICENSING ADMINISTRATOR (01279) 446005

RECOMMENDED that:

The Sub-Committee considers all the evidence presented and determines the case in accordance with the provisions of the Licensing Act 2003 S52.

BACKGROUND

1. Street Corner Shop, 11 Market House, Stone Cross, Harlow, CM20 1BL is a single storey retail premises located in the town centre. The premises comprise a retail area, storeroom and WC.
2. Mr Saiwan Ali made an application to the Council dated 14 September 2017 for a premises licence to sell alcohol. The current premises licence was granted on 18 October 2017. The licensable activity is limited to the sale or supply of alcohol between the hours of 08.00 and 22.00.
3. On 12 January 2018 Harlow Council received from Liz Webb (on behalf of Essex County Council Trading Standards) an application for a review dated 4 January 2018 of the premises licence held by Mr Saiwan Ali in respect of Street Corner Shop. The application was made following the detection by Trading Standards of illicit tobacco at the premises.
4. On 30 November 2017, Trading Standards Officers accompanied by Essex Police and Wagtails UK Ltd visited Street Corner Shop and found concealments of illicit tobacco. The visit was made after Trading Standards had received intelligence about the sale of illicit tobacco. The tobacco seized from the premises is described by Trading Standards as UK excise duty evaded and all packets bore foreign labels and some is suspected as counterfeit. In total 7,700 cigarettes and 3.1kg of hand rolling tobacco was seized. One shop assistant was present at the premises. The designated

premises supervisor was not in attendance. Further details of the seizure are available in the application for review dated 4 January 2018 at Appendix 1.

5. Members of the Licensing Sub-Committee will be aware that Trading Standards Officers carried out an earlier visit to the premises on 15 October 2016 during which illicit tobacco was seized. This matter resulted in a review of the premises licence on 19 January 2017 and to the subsequent revocation of that licence. Mr Saiwan Ali was not the licence holder on 15 October 2016. The shop assistant at the premises on 15 October 2016 and 30 November 2017 was the same person.
6. Liz Webb from Trading Standards has stated in the review application that:
 - the sale of counterfeit tobacco is a criminal offence under Section 92 of The Trademarks Act 1994, and
 - the sale of duty evaded tobacco is a criminal offence under the Customs and Excise Management Act 1979, and
 - that other offences may have been committed as detailed in the review application in Appendix 1.
7. The review application is supported by statements from Liz Ellen Webb, Jennifer Wiehahn, Michelle Jane Walsh and Gary Nunn from Essex Trading Standards in Appendix 2.
8. Essex Police have commented on the review application at Appendix 3.
9. The current premises licence is appended at Appendix 4.

ISSUES

10. The Act supported by the guidance provides the licensing authority with a range of appropriate powers for promotion of the licensing objectives when determining a review. The powers set out in section 52 (4) are:
 - a) To modify the conditions of the premises licence or to add new conditions.
 - b) To exclude a licensable activity from the scope of the licence.
 - c) Removal of a designated premise supervisor.
 - d) Suspension of the licence for a period of not more than 3 months or,
 - e) To revoke the licence.

11. Revised guidance issued April 2017 under section 182 of the Licensing Act 2003 sets out the circumstances under which a review may be brought. Detailed guidance for licensing authorities on the review process is available at section 11 on page 87. Paragraphs 11.24 to 11.28 provides guidance on reviews brought arising in connection to crime. Section 11.24 of the guidance makes reference to crime which is not directly associated with the licensable activity including the sale of contraband or stolen goods and reminds the licensing authority that its role is not to determine guilt or innocence but to promote the crime prevention objective. Section 11.27 of the guidance makes reference to criminal activity which should be treated particularly seriously and includes the sale or storage of smuggled tobacco and alcohol.
12. Section 181 and Schedule 5 of the Licensing Act 2003 sets out grounds for appeal against a decision of the Licensing Sub-Committee. An appeal may be made against that decision by:
 - a) The applicant for the review.
 - b) The holder of the premises licence.
 - c) Any other person who made a relevant representation in relation to the application.
13. The appeal procedure satisfies the requirement of the Human Rights Act

IMPLICATIONS

Place (includes Sustainability)

None specific.

Author: **Graeme Bloomer, Head of Place**

Finance (Includes ICT)

None specific.

Author: **Simon Freeman, Head of Finance**

Housing

None specific.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing (includes Equalities and Social Inclusion)

It is important to ensure that only the appropriate licensable activity takes place in retail and other units. Failure to do so could influence or have implications community wellbeing.

Author: **Jane Greer, Head of Community Wellbeing**

Governance (includes HR)

Members are required to consider the review application, the representations received and determine the application in accordance with the promotion of the licensing objectives. Further legal advice in relation to any aspect of this application will be provided by an Officer at the Sub-Committee hearing to enable the process to be fair to all parties.

Author: **Dimple Roopchand, Assistant Solicitor, on behalf of Amanda Julian, Legal Services Manager**

Background papers

Harlow Council Statement of Licensing Policy January 2014.

<http://www.harlow.gov.uk/sites/harlow-cms/files/files/documents/files/Statement%20of%20Licensing%20Policy%2017.pdf>

The Licensing Act 2003 (Hearings) Regulations 2005 as amended.

<http://www.legislation.gov.uk/uksi/2005/44/contents/made>