

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF ARUN DISTRICT COUNCIL LICENSING SUB-COMMITTEE ON 27 APRIL 2023

SUBJECT:

Licensing Act 2003, S51 Application for review of a premises licence

REPORT AUTHOR: Louise Dewberry – Licensing Officer

DATE: 13 April 2023

EXTN: 01903 737680

AREA: DIRECTORATE Growth.

EXECUTIVE SUMMARY:

The Authority is in receipt of an application to review a premises licence for a premises known as Premier, 220-222 Chichester Road, Bersted, Bognor Regis, West Sussex, PO21 5BE.

The application is from West Sussex Trading Standards Service, a responsible authority, who contend that the licensing objectives of the Protection of Children from Harm and Prevention of Crime and Disorder have been seriously undermined. **(Appendix A)**

Supporting representations in this matter have been made by Sussex Police **(Appendix B)**,

There is NO request by the applicant to have the review held in camera as there are NO ongoing criminal investigations.

RECOMMENDATIONS:

The Sub-Committee should make an evidence-based determination, justified as being appropriate for the promotion of the licensing objectives.

The Sub-Committee may only consider matters referred to in representations relevant to the promotion of one or more of the four licensing objectives. These must be considered in the context of what is relevant to the review application.

1. BACKGROUND:

1. BACKGROUND

- 1.1 This is an application for a review of a premises licence which has been received from West Sussex Trading Standards Services, a Responsible Authority. **(Appendix A)**

- 1.2 Premier is a convenience store located at 220-222 Chichester Road, Bersted, Bognor Regis, West Sussex, PO21 5BE.
The premises is licensed to sell and supply alcohol for consumption off the premises, under the provisions of the Licensing Act 2003 under Licence number 6328. **(Appendix C)**

- 1.3 The Premises Licence Holder for 220-222 Chichester Road, Bersted, Bognor Regis, West Sussex, PO21 5BE is a Private Limited Company Justin Retail Limited of the same address, the sole director of the company is Mr Sanjaykumar Patel who is also the Designated Premises Supervisor for the premises.

- 1.4 The application for review of the licence states that on 23 November 2022, West Sussex County Council Trading Standards (WSCCTS) carried out a controlled Test Purchasing exercise. A staff member at Justin Retail Ltd t/a Premier Chichester Road sold alcohol to a Trading Standards volunteer who was under the age of 18.

The sale of alcohol to a person under the age of 18 is a criminal offence under the Licensing Act 2003.

Members of the Licensing Sub-Committee will have read the application for a review from Trading Standards with the following statement,

“It’s contended the sale of alcohol to an underage person in the circumstances outlined is a breach of the licensing objective ‘the protection of children from harm’ and that the licensee has failed in their responsibilities to promote said licensing objective.

In considering a review of this premises licence the committee are also reminded of a second licensing objective ‘prevention of crime and disorder’ which has been failed by commission of the criminal offence that took place on 23rd November 2022.”

The application for review further states –

“the Responsible Authority do not believe the licensing objectives are being continually upheld at these premises and deem it both proportionate and necessary to invite the committee to consider a review of the premises licence, to limit further criminal activity by this licence holder and to act as a deterrent to other operators considering such illegal conduct. As underage prevention advice had been provided just before the sale of alcohol was made to a Trading Standards volunteer and as there have been further breaches at another store with the same DPS, the Responsible Authority suggests an appropriate outcome of the review would be a Revocation of said alcohol licence.”

- 1.5 Members of the Licensing Sub-Committee are reminded that the Licensing Authority may also consider the following, which are taken from the Home Office Revised Section 182

11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more 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.

- 1.6 The application for review includes evidence of the DPS/Premises licence holder Nick retail Ltd Selsey convenience store, 143 High Street, Selsey, Chichester, West Sussex, PO20 0QB this is the same DPS/Licence holder as Justin Retail Ltd, the committee should be made aware the Selsey store is not located within our district. Evidence file is available on request for Nick Retail Ltd for the committee's reference.

2.0 RELEVANT REPRESENTATIONS

- 2.1 The application for a review by West Sussex Trading Standards Services is at **Appendix A**. The grounds for seeking the review are the Protection of Children from Harm and Prevention of Crime and Disorder.
- 2.2 The application also prompted Sussex Police to support the review. Their submission is attached at **Appendix B**.
- 2.3 Relevant representation has also been received from Director of Public Health West Sussex County Council a responsible authority supporting the review application attached as **Appendix F**.

3. **ARUN DISTRICT COUNCIL POLICY CONSIDERATIONS**

3.1 Relevant extracts from Arun District Council's Licensing Principles are shown in this section.

(5.1) The main principles of the policy are: -

- to reduce the fear of crime.
- to encourage cultural diversity and lively, safe town centres.
- to reduce the burden of unnecessary regulation on business.
- to contribute to the quality of life.
- to promote public health.
- to ensure that premises are being managed responsibly.
- to ensure the promotion of the licensing objectives

(5.2) The Policy is also intended to ensure that the provision of additional opportunities for licensable activities are matched by appropriate and proportional measures enabling the police and licensing authorities to act promptly to maintain public order and safety.

(Appendix 3 – Licence Review Guidelines)

The Licensing Committee and any of its Sub-Committees, when holding licence review hearings, will follow these guidelines so as to maintain a degree of consistency and transparency when making decisions. The Committee reserves the right to amend and republish these guidelines in light of operational experience and as a separate document to the statement of licensing policy. In reaching a decision the committee will take into account any of the aggravating or mitigating factors below but may also consider other relevant evidence before them. Likewise, they can consider any other proportionate and appropriate action as allowed under the Licensing Act 2003. Section 182 guidance will also be considered in conjunction with this policy.

Relevant representation received regarding The Prevention of Crime and Disorder	
Aggravating Factors	Mitigating Factors
Encouraging or inciting criminal behaviour associated with licensed premises	Good controls, practices and training in place
Serious injury results	Willingness to attend and
Confidence in management ability to rectify defects	cooperate during mediation steps
Previous track record	Previous track record
High rate of turnover of Licence holder/ designated premises supervisor	

Relevant Representation received regarding Protection of children from Harm	
Aggravating Factors	Mitigating Factors
Age Of Children Previous warnings ignored Children exposed to physical harm/danger as apposed to other threats Activity arose during normal school hours Deliberate or wilful exploitation of children Large number of children affected Children not allowed on premises as part of operating Schedule Involves under-age exposure to alcohol Inappropriate or inadequate ratio of adults to children.	Conduct occurred with consent of person with parental reponsability for child. Short duration of event No physical harm Short -term disturbance Undertaking/commitment not to repeat activity Voluntary acceptance/proposal of additional conditions Children permitted on premises as part of Operating Schedule Good controls, practices and training in place fro preventing harm to children. Not involving under-age exposure to alcohol.

4.0 RELEVANT LEGISLATION LICENSING ACT 2003

4.1 Section 146 Selling Alcohol to children

Members attention is drawn to this section which states

(1)A person commits an offence if he sells alcohol to an individual aged under 18.

(4) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that—

(a)he believed that the individual was aged 18 or over, and

(b)either—

(i)he had taken all reasonable steps to establish the individual's age,

or

(ii)nobody could reasonably have suspected from the individual's appearance that he was aged under 18.

(5) For the purposes of subsection (4), a person is treated as having taken all reasonable steps to establish an individual's age if—

(a)he asked the individual for evidence of his age, and

(b)the evidence would have convinced a reasonable person.

(6) Where a person ("the accused") is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.

(7) A person guilty of an offence under this section is liable on summary conviction to

a fine not exceeding level 5 on the standard scale.

APPENDICES:

A: Application for a Review by West Sussex Trading Standards.

B: Representation by Sussex Police

C: Copy of Premises Licence.

D: Map of area.

E: Evidence Bundle.

F: Representation by Director of Public Health

Background Papers:

Licensing Act 2003

Section 182 Guidance

Arun Statement of Licensing Policy

PROPOSAL(S):

5.0 OBSERVATIONS

5.1 The Sub Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance
- Public Safety
- The Protection of Children from Harm

5.2 In making its decision the Sub Committee is also obliged to have regard to national guidance and Arun's Statement of Licensing Policy.

5.3 The Sub Committee must also have regard to all relevant representations and evidence that it hears.

OPTIONS:

6 The Committee may:

- a) Revoke the premises licence
- b) Suspend the licence for a period not exceeding three months
- c) Remove the Designated Premises Supervisor
- d) Modify the conditions of the licence
- e) Take no further action

7. CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council	x	
Relevant District Ward Councillors	x	

Other groups/persons (please specify)	x	
8. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial		x
Legal	x	
Human Rights/Equality Impact Assessment		x
Community Safety including Section 17 of Crime & Disorder Act		x
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		x
9. IMPLICATIONS: Any decision made by the Licensing Sub-Committee can be appealed to the Magistrates Court		
10. BACKGROUND PAPERS: A: Application for a Review by West Sussex Trading Standards. B: Representation by Sussex Police C: Copy of Premises Licence. D: Map of area. E: Evidence Bundle. F: Representation by Director of Public Health		