

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF ARUN DISTRICT COUNCIL LICENSING SUB-COMMITTEE ON 10 JULY 2023

### SUBJECT:

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

**REPORT AUTHOR:** Andrew Burrows – Licensing Officer

**DATE:** 23 June 2023

**EXTN:** 01903 737749

**AREA:** DIRECTORATE Growth.

### EXECUTIVE SUMMARY:

The Authority is in receipt of an application to review a premises licence for a premises known as Premier, Premier 'The Corner Shop' is a convenience store located at 109 – 111 Felpham Road, Felpham, Bognor Regis, West Sussex. PO22 7PW.

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

Supporting representation in this matter has been made by The West Sussex County Council (WSCC) Public Health Directorate **(Appendix C)**

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 'The Corner Shop' is a convenience store located at 109 – 111 Felpham Road, Felpham, Bognor Regis, West Sussex. PO22 7PW.

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 6444. **(Appendix D)**

1.3 The Premises Licence Holder for 109 – 111 Felpham Road, Felpham, Bognor Regis, West Sussex. PO22 7PW is Mrs M Patel, 111A Felpham Road, Felpham, Bognor Regis, West Sussex. PO22 7PW.

1.4 The application for review of the licence states that on the 23rd of November 2022, during a controlled Trading Standards Test purchasing exercise, a shop employee at Felpham Corner Shop Limited t/a Premier Corner Shop, 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 -

1.5 Despite the store displaying Challenge 25 signage around the premises and claiming to operate such policy, the seller did not follow the guidance of such policy, contrary to the Licence Mandatory condition: "The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol".

1.6 On the 4th of April 2022, the Responsible Authority received an intelligence report, alleging Felpham Corner Shop Ltd t/a Premier Corner Shop, 109-111 Felpham Road, Bognor Regis, West Sussex, PO22 7PW regularly sells energy drinks and cigarettes to individuals aged under 18 from a local school.

1.7 On the 29th of June 2022, a Trading Standards Officer from the Responsible Authority conducted an advice visit in relation to selling age restricted products. The Trading Standards Officer spoke to one of the directors of the business, Mrs Minal PATEL. Several points around age restricted products and training were discussed during the advice visit with Mrs PATEL.

1.8 On the 1st of July 2022, a follow up advice letter, which reiterated what was discussed from the advice visit, was sent to Mrs PATEL.

1.9 On the 23rd of November 2022 as part of an underage sales operation the Responsible Authority were carrying out that day. A 17-year-old volunteer under the instruction and supervision of the Responsible Authority entered Felpham Corner Shop Ltd t/a Premier Corner Shop 109-111 Felpham Road, Bognor Regis, West Sussex, PO22 7PW. The child volunteer selected two cans of Gordons Pink Gin & Tonic and took them to the till. A female working behind the till area sold the two cans of Gordons Pink Gin & Tonic to the child volunteer, without asking them for any identification. After securing the two

cans of Gordons Pink Gin & Tonic as evidence, Trading Standards Officers immediately returned the shop to explain to the seller about the test purchase and take all the necessary and relevant information to instigate an investigation. Under caution, the seller stated the volunteer looked 19 years old. The seller advised that they had been working on and off for a couple of weeks and that they have had verbal training on age restricted products. When the seller was asked about 'Think 25' Policy they said they were trained on this policy. The seller explained that the alcohol was sold to the underage volunteer because they did not think, and that it was within school hours. Further questions were put by the Responsible Authority to a representative of the company.

- 1.10 Mr Harshadkumar Jayentibhai PATEL and Mrs Minal Manubhai PATEL are directors of the Company and responded to questions. Mrs Minal Manubhai PATEL is the DPS for this premises. Mr PATEL explained that the sale of alcohol was due to a mistake from the seller/shop employee. Mr PATEL explained that the seller/shop employee was on training and that him and Ms PATEL were unloading stock from the car when the unlawful sale of alcohol took place. Mr PATEL and Mrs PATEL stated that they never leave the seller alone normally. Mr PATEL advised that the seller/shop employee received verbal training but there is no written documentation that the seller/shop employee had signed. Mr PATEL is the DPS for a business of Felpham Corner Shop Limited. That second business trades as Premier, Elmer Beach Stores, 91- 93 Elmer Road, Bognor Regis, PO22 6HB.
- 1.11 Under Section 146 of the Licensing Act 2003, it is a criminal offence to sell alcohol to a child under the age of 18 years old.
- 1.12 Section 146 (4) contains a defence 'that he believed the individual was 18 or over, and he had either taken all reasonable steps to find out the individual's age or that no one could reasonably suspect from their appearance that they were under 18.'
- 1.13 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'.
- 1.14 The licensee has failed in their responsibilities to promote this licensing objective.
- 1.15 In considering a review of this premises licence, the committee are reminded that the second licensing objective 'Prevention of Crime and Disorder' has also been failed by commission of the criminal offence that took place on the 23rd November 2022.
- 1.16 In view of the above, the Responsible Authority do not believe the licensing objectives are being continually upheld at Premier Corner Shop, 109-111 Felpham Road, Bognor Regis, PO22 7PW, 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.

1.17 As underage age advice had been provided before the sale of alcohol was made to a Trading Standards volunteer. The Responsible Authority suggests an appropriate outcome of the review would be a 3-month suspension.

1.18 “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.

1.19 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.”

1.20 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.

## **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 C**.

**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.

<b>Relevant representation received regarding The Prevention of Crime and Disorder</b>	
<b>Aggravating Factors</b>	<b>Mitigating Factors</b>
Encouraging or inciting criminal behaviour associated with licensed premises	Good controls, practices and training in place
Serious injury results	Willingness to attend and cooperate during mediation steps
Confidence in management ability to rectify defects	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
<p>Age Of Children  Previous warnings ignored.  Children exposed to physical harm/danger as opposed 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.</p>	<p>Conduct occurred with consent of person with parental responsibility 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 preventing harm to children.  Not involving under-age exposure to alcohol.</p>

#### **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: Representation by Director of Public Health
- D: Copy of Premises Licence.
- E: Map of area.
- F: Evidence Bundle.

**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 Sussex Police, Home Office, Pollution Control, Public Health	x	
<b>8. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES:</b>	<b>YES</b>	<b>NO</b>

<b>(Explain in more detail at 6 below)</b>		
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:**

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