

Crawley Borough Council

	Report No: ES/212	A
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Report to Licensing Sub Committee

Monday 27 April 2009

**Review of a Premise Licence;
Somerset Store LTD,
Broadfield Barton, Broadfield**

**ANGELA TANNER
Head of Environmental Services**

1. Details of Application

Reference Documents and Guidance

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|-----|---|---|
| 1.1 | On the 10 th March 2009, Sussex Police as a 'responsible authority', submitted an application to the Council as the Licensing Authority for the Borough of Crawley for a REVIEW of above mentioned premises licence. | <i>Appendix A -
Copy of the Review
Application plus supporting
material</i> |
| 1.2 | Sussex Police has requested a review on the grounds that the licence holder is not promoting the statutory objective(s) of:-
(I) Preventing crime and disorder
(II) The protection of children from harm | <i>s.51 – LA03
Information pack
Part 7</i> |
| 1.3 | On Wednesday 8 th April 2009 Sussex Police submitted an additional bundle of papers to the Council, these documents comprising of witness statements and other documents in support of the review application. | <i>Appendix B</i> |
| 1.4 | 'Somerset Stores LTD', currently has a premise licence for the sale by retail of alcohol for consumption <u>off</u> the premises which is at Broadfield Barton, Broadfield. | <i>Appendix C
Copy of the current
premises licence</i> |

- 1.5 The premises licence was granted in accordance with the provisions of the Act to:
 " Somerfield Stores LTD" *Appendix C*
- 1.6 The 'designated premises supervisor' (DPS) named on the licence is:-
 Mr. Russell Atfield *Appendix C*
- 1.7 On Wednesday 8th April 2009, the premises licence holder, through their representative, submitted documentation for the consideration of the Licensing Authority, copy attached. *Appendix D*

2. Consultation

- 2.1 In accordance with legislation the Council, as the relevant Licensing Authority, shall advertise any application for a review of a premises licence by displaying prominently a notice at:
- (a) on or near the site of the premises to which the application relates where it can be conveniently read from the exterior of the premises by the public.
 - (b) the offices of the Council in a central and conspicuous place
 - (c) on the Council website if so available.
- 2.2 This notice must be displayed for no less than 28 consecutive days starting on the day after the application was received by the licensing authority.
- 2.3 The notice in accordance with legislation was posted in and immediately outside of the premises by the Council's Licensing Staff on the 11th March 2009. The notice was also posted on the Town Hall notice board and on the Council's website.
- 2.4 No representations were received for or against the application (other than from the licence holder).

3. Background

- 3.1 The Council is the 'relevant licensing authority' in relation to any premises within the Borough of Crawley which is to be used for one or more 'licensable activities' in accordance with the Licensing Act 2003, ("the Act"). *Information Pack Part 3*
- 3.2 Section 51 of the Act states where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of a licence provided that the grounds for the review are relevant to the 'licensing objectives' are not frivolous, vexatious or repetitious. *s.51 – LA03 Information pack Part 7*
- 3.3 The proceedings set out in the 2003 Act for reviewing premises *S182 – Guidance*

licenses represent a key protection for the community where problems associated with the licensing activities are occurring after the grant or variation of premises licence.

11.1

3.4 Upon receipt of an application for the review of a premises licence the licensing authority must hold a hearing to consider it and any relevant representations.

3.5 The licensing authority must, having regard to the application and any relevant representations, take such of the steps below (if any) as it considers necessary for the promotion of the licensing objectives:-

Section 52

- Modify the conditions of the premises licence (*that is, to alter or omit any existing conditions or to add any new conditions*)
- Exclude a licensable activity (*permanently or for a temporary period not exceeding 3 months*)
- Remove the designated premises supervisor,
- Suspend the licence (*for a period not exceeding 3 months*),
- Revoke the licence.

3.6 Failure to comply with any condition attached to a licence is a criminal offence, which on conviction is punishable by a fine of up to £20,000 or up to 6 months imprisonment or both

3.7 The following parties may appeal the decision of a licensing authority on any application for review of a premises licence:

- (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.

3.8 On an appeal against a decision of a licensing authority a magistrates court may:

- (a) dismiss the appeal,
- (b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
- (c) remit the case to the licensing authority to dispose of in accordance with the direction of the court

and make such order as to costs as it thinks fit.

3.9 In anticipation of any such appeal, it is therefore important that licensing authorities should give comprehensive reasons for its decisions. Failure to give adequate reasons could itself give rise to grounds for an appeal.

3.10 It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and the Secretary of State's Guidance issued under section 182 of the Act.

*'Statement of Policy'
Information Pack
Part 1*

3.11 In deciding the application for review it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the application identifies. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

4. Staffing, Financial and Legal Implications

4.1 There are no extra staffing or financial implications to the Council, save for those laid out in Part 10 of the Information Pack in respect of possible appeals

*Information Pack:
Part 10
(General)*

4.2 The Council is required to consider the impact any decision may have on an individual's Human Rights.

*Information Pack:
Part 10
(General)*

4.3 The Council is required to consider the impact any decision may have on crime and disorder in the area (Section 17, Crime and Disorder Act, 1998).

5. Community Strategy and Corporate Plan

5.1 See part 10 (General); Information pack

Information Pack: Part 10

6. Considerations to be Addressed in Accordance with Licensing Guidance issued under section 182 of the Licensing Act 2003

6.1 Members must give due consideration to the merits of each individual case. Attention is drawn to the following sections of the 'Members' Information Pack';

Council's Licensing Policy,
LACORS Guidance,
CBC Hearing Procedures,
Premises Guidance,
Licensing Act (premises),
Regulations (premises),
Conditions (premises)

*Part 1
Part 2
Part 2
Part 3
Part 3
Part 3*

- 6.2 The aim of the Council’s policy is to promote the licensing objectives set out in the Act whilst securing the safety and amenity of residential communities and facilitating a sustainable entertainment and cultural industry. *CBC Alcohol Licensing Policy 1.2*
- 6.3 Members should also consider the Guidance under section 182 of the Act, issued by the Secretary of State, in particular the following parts of it:
- | | |
|------------------------|------------|
| <u>Reviews;</u> | Section 11 |
| <u>Conditions;</u> | Annex D |
| Crime & Disorder | Part 1 |
| Protection of Children | Part 5 |
- 6.4 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. *S182 11.26*
- 6.5 Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crime, it is expected that revocation of the licence – even in the first instance – should be seriously considered. *S182 11.26*
- 6.6 Section 4 of the 2003 Act provides that in carrying out its functions, a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.
- 6.7 However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.
- 6.8 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 6.9 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. *Section 182 Statutory Guidance 1.15*

6.10	In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate such as door supervisors, CCTV etc	<i>Section 182 Statutory Guidance 1.27</i>
6.11	All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.	<i>Section 182 Statutory Guidance 1.28</i>
6.12	Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area	<i>Section 182 Statutory Guidance 1.29</i>
6.13	In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to: <ul style="list-style-type: none"> • the steps that are necessary to promote the licensing objectives; • the representations(if any), (including supporting information) presented by all the parties; • section 182 Guidance; • its own statement of licensing policy. 	<i>Section 182 Statutory Guidance 9.25</i>
6.14	Conditions which relate to the four licensing objectives could be used where necessary and appropriate to the particular circumstances of an individually licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances.	<i>Section 182 Statutory Guidance 10.5</i>
6.15	The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues.	<i>Section 182 Statutory Guidance 10.13</i>
6.16	Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.	<i>Section 182 Statutory Guidance 10.14</i>
6.17	Examples of conditions which may assist in the promotion of the licensing objectives can be found in the information pack.	<i>Information Pack: Part 1, Policy Part 9, conditions</i>

7. Recommendations

- 7.1 Having had regard to the application and any relevant representations the Sub-Committee must take any one or more of the following steps which the Sub-Committee considers are necessary for the promotion of the licensing objectives. Those steps are: *Section 52*
- 7.1.1 Modify the conditions of the premises licence (*alter or omit any existing conditions or to add any new conditions*).
 - 7.1.2 Exclude a licensable activity from the scope of the premises licence (*permanently or for a temporary period not exceeding 3 months*).
 - 7.1.3 Remove the designated premises supervisor from the premises licence.
 - 7.1.4 Suspend the premises licence (*for a period not exceeding 3 months*).
 - 7.1.5 Revoke the premises licence.
- 7.2 Alternatively, if the Sub-Committee does not consider that any of the steps (as set out in 7.1.1 to 7.1.5 above) are necessary for the promotion of the licensing objectives, then the Sub-Committee should take no action.

8. Background Papers

All associated paper work regarding this application.
The information pack
Statutory Guidance
Statement of Policy

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