

**LICENSING ACT 2003 HEARING - THURSDAY 26 NOVEMBER 2020 @ 0930HRS**  
**APPLICATION FOR THE REVIEW OF A PREMISES LICENCE**

**1. Premises:**

K B Superstores  
337-339 Oxford Road  
Reading  
Berkshire  
RG30 1AY

**2. Applicants Requesting Review:**

Thames Valley Police

**3. Grounds for Review**

The application is for the review of premises licence in respect of the above-mentioned premises. The application has been submitted by Thames Valley Police, who are a named responsible authority under the Licensing Act 2003 to address the failure of the premises licence holder to promote the licensing objectives via their insufficient measures to ensure due diligence or compliance with their licence conditions. Poor processes, lack of compliance, breaches of conditions and failure by the PLH to address or improve their delivery of Licensing Act 2003 legislation is leading to a failure to promote the licensing objectives and therefore is negatively affecting all four licensing objectives in equal measure.

**4. Date of receipt of application: 03 October 2020**

A copy of the review application and appendices received are attached as **Appendix LIC-1**

**5. Date of closure of period for representations: 30 October 2020**

**6. Representations received:**

During the 28 day consultation period, representations were received in regard to this review application from:

Reading Borough Council - Licensing team - Attached as **Appendix LIC-2**

Interested Party - Attached as **Appendix LIC-3**

Additional information from TVP - Attached as **Appendix LIC-4**

**7. Background**

The premises is a convenience store with an off-licence located on Oxford Road, just west of Reading town centre. The Licensing Act 2003 premises licence was first granted in 2005. The licence was transferred to the current owner on 28.07.2017.

The Premises Licence Holder is: Buddha Eye Ltd, 337-339 Oxford Road, Reading, RG30 1AY. The sole Director is stated as Prasanta Gurung

The Designated Premises supervisor is: Mrs Sarsati Gurung

The premises currently has the benefit of a premises licence. A copy of the current licence is attached at Appendix LIC-5

#### **8. Licensing Objectives and Reading Borough Council's Licensing Policy Statement**

In determining this application the Licensing Authority has a duty to carry out its functions with a view to promoting the four licensing objectives, which are as follows:-

- the prevention of crime and disorder;
- public safety
- the prevention of public nuisance
- the protection of children from harm

In determining this application, the Licensing Authority must also have regard to the representations received, the Licensing Authority's statement of licensing policy and any relevant section of the statutory guidance to licensing authorities.

#### **9. Power of Licensing Authority on the determination of a Review**

In determining the review application the sub-committee can take such steps as it considers appropriate for the promotion of the licensing objectives, which are:

1. Take no further action
2. To issue formal warnings to the premises supervisor and/or premises licence holder
3. Modify the conditions of the licence (including, but not limited to hours of operation of licensable activities)
4. Exclude a licensable activity from the scope of the licence
5. Remove the designated premises licence supervisor
6. Suspend the licence for a period not exceeding three months
7. Revoke the licence.

Where the sub-committee takes a step mentioned in 3 or 4 it may provide that the modification or exclusion is to have effect for a period not exceeding three months or permanently.

Amended Guidance issued under section 182 of the Licensing Act 2003 (April 2018)

Licensing objectives and aims

1.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

1.3 The licensing objectives are:

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

1.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;

### **Purpose**

1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

1.8 The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

### **The role of responsible authorities (eg Police)**

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations

with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

### **Licensing authorities acting as responsible authorities**

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

### **Determining actions that are appropriate for the promotion of the licensing objectives**

9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

### **The Review Process**

11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is

expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

### **Powers of a licensing authority on the determination of a review**

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion 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. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where

subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

### **Reading Borough Council Licensing Policy Statement (2018)**

1.5 This licensing policy aims to make Reading's night time economy an economy for all. A diverse range of responsibly run premises are to be encouraged. The licensing authority wishes to discourage drunkenness and a move away from alcohol led vertical drinking establishments. We would expect responsibly run premises to actively promote the licensing objectives through promoting extra seating at their premises; instigating effective dispersal from their premises at the conclusion of licensable activities and engagement with the licensing authority and other responsible authorities in policies, initiatives and strategies that promote Reading as a safe, healthy, diverse and vibrant night time economy suitable for all.

1.6 The predominantly urban nature of Reading as a town means that an appropriate balance needs to be struck between the needs of local business and the needs of local residents. This licensing policy seeks to encourage all stakeholders to engage in the licensing process so that the needs of all can be taken into account and issues dealt with in a spirit of partnership and cooperation.

### **Other Initiatives**

2.19 Reading's night time economy has achieved Purple Flag and Best Bar None status. These are nationally recognised schemes meaning the town has achieved a level of excellence and we would expect all licence holders and potential applicants to take cognisance of these standards and practices. The Authority and its partners shall seek to work with all stakeholders in the town to maintain these standards. The town also has a very successful and well attended Pubwatch scheme both in the town centre and in the outer areas of Reading. This scheme is supported by Thames Valley Police and Reading Borough Council and is a particularly useful forum for licence holders to share information, best practice and work in a collaborative manner so as to make the night time economy as vibrant and safe as possible for all. The Authority would expect all prospective applicants and current licence holders to make use of their local Pubwatch scheme and engage fully in any relevant initiatives that stem from it.

### **Crime and Disorder Act 1998**

3.2 This Act requires local authorities and other bodies to consider crime and disorder reduction. Section 17 of the Act states that it shall be the duty of each authority, to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that is reasonably can to prevent, crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment). This links specifically with the licensing objective of prevention of crime and disorder and the licensing authority will take into account all reasonable measures that actively promote this licensing objective.

### **Other Legislation that the Licensing Authority will consider**

3.7 The Licensing Authority will also have cognisance to the following legislation when it decides to discharge its responsibilities under the Licensing Act. This list is not exhaustive:

- Environmental Protection Act 1990 which deals with noise and nuisance
- Regulatory Reform Order 2005 which deals with fire safety
- Highways Act 1980 which deals with pavement café licences
- Reading Borough Council Act 2013 which deals with street trading and touting
- Health and Safety at Work Act 1974 and Food Hygiene regulations
- Planning legislation (see paragraphs 2.2-2.9 of this policy)

### **Licensable Activities**

4.15 This policy relates to all applications for the following licensable activities:

- The sale of alcohol by retail
- The supply of alcohol to club members
- The provision of regulated entertainment:
  - Performance of a play
  - Performance of a film
  - An indoor sporting event
  - Boxing or wrestling

- Performance of live music
- Performance of recorded music
- Performance of dance
- The provision of late night refreshment (the sale of hot food and drink between 2300hrs and 0500hrs)

### **Review of a premises licence or club premises certificate**

5.13 Any premises that has a premises licence or club premises certificate may have that licence reviewed by any of the named Responsible authorities - including the Licensing Authority in its role as a Responsible Authority. Thames Valley Police may also submit a Summary Review if there is a premises associated with serious crime and disorder. When the Licensing Authority instigates a review it will ensure that there is a clear separation of functions between the officer acting as the licensing authority and the officer acting as a responsible authority.

5.15 The Act provides strict guidelines, timescales and procedures for review applications and hearings and the Authority will deal with every review application in accordance with these rules.

### **General Approach**

#### **Conditions**

6.1 Conditions shall be appropriate and proportionate for the promotion of the licensing objectives and shall be unambiguous and clear in their stated aims. Conditions will also be tailored to the type, location and characteristics of the particular premises and the relevant licensable activities. Any condition imposed by the Authority shall also aim to avoid duplication of other legislation unless there is a requirement to impose such a condition in order to promote the licensing objectives (for example, a capacity limit for public safety reasons). This shall apply to all relevant applications (grant/variation of a premises licence or club premises certificate)

6.5 Any conditions imposed upon a premises licence or club premises certificate will be tailored to that type of premises and the style of operation. Consideration will also be given to the locality of the premises; issues in the locality; the issues set out in the Guidance and any policy, initiative or other matter the licensing authority wishes to take into account in order to promote the four licensing objectives.

## **7. Licensing Hours**

### **General Approach**

7.1 The Licensing Act 2003 gives the licensing authority the power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of this policy. The licensing authority will make appropriate decisions on licensing hours for the locality of each premises. All applications will be considered on its individual merits.



7.2 When an application receives representations, the authority may consider reducing the opening hours and times for licensable activities if it considers it appropriate for the promotion of the licensing objectives.

7.4 Where it is deemed appropriate and proportionate to do so, the authority may seek to reduce the hours for licensable activities in order to promote an orderly and gradual dispersal from a certain area or certain premises.

## **Enforcement Approach**

### **General Principles**

9.1 It is the responsibility under the Act for all responsible authorities; licence holders and prospective licence holders to actively promote the four licensing objectives. The Council along with partner agencies, has a wider responsibility to protect the public as a whole and prevent crime, harm or nuisance from taking place.

9.2 The Authority will carry out its licensing functions with a view to actively promoting the licensing objectives and maintaining public safety. This applies to the dual role the licensing authority has both as the administrator of the process and as a responsible authority. 9.12 Where offences are found to have been carried out on licensed premises, the Authority has a number of enforcement options available to it. The Authority will work with partner agencies to determine which enforcement option is appropriate for the promotion of the licensing objectives. The seriousness of the offences found will be taken into consideration as well as any previous issues of non-compliance or criminality that have taken place at the licensed premises.

9.13 The enforcement options available to the Authority are wide-ranging. The Authority may consider, for example, that a letter detailing the issues found during an inspection followed by a period of time to rectify them is sufficient to promote the licensing objectives. Similarly, the Authority may consider that the breaches are sufficiently serious to warrant an immediate performance meeting with a licence holder so that a discussion can take place about the adequacy of the processes in place at the premises. This could, for example, lead to recommendations being put to the licence holder to implement much more robust conditions and processes to avoid a repeat of the breaches found. The authority may also decide to prosecute relevant persons for offences being carried out on licensed premises. Licence holders should note that the authority can take one or more of these options available to it at the same time for the same offences should it be deemed appropriate to do so.

9.15 Licensed premises that have a history of non-compliance over a period of months and years and/or incidents of serious crime taking place at that premises, will likely find that the Authority will initiate a review with a view to asking for the licence to be considered for revocation.

9.16 When considering what enforcement action to take, the Authority will always consider what is the most appropriate and proportionate step to promote the

licensing objectives. The Authority is not required to wait for offences to occur before deciding it needs to take appropriate action. Case law - notably *East Lindsey District Council v Abu Hanif* - states that the promotion of the licensing objectives requires a prospective consideration of what is warranted in the public interest having regard to the twin considerations of prevention and deterrence. Similarly, the Secretary of State's Guidance to the Licensing Act makes clear that there is no requirement for the Authority to wait for the outcome of any criminal proceedings before it initiates any enforcement action. This is the approach that the Authority will take when considering what, if any, action should be taken when condition breaches and other criminal activity is found at licensed premises.

9.18 Any responsible authority or person defined as 'any other person' within the Act can initiate a review of any premises licence or club premises certificate. When another responsible authority or other person initiates a review, the Authority will deal with it as the Licensing Authority and may also wish to make representation in support of the review within its role as a responsible authority if it has relevant information.

9.20 The Authority shall endeavour to work with licence holders and applicants where it is believed that steps can be taken to rectify issues identified at licensed premises. However it cannot merely continue that approach if it has previously failed or the licence holder is unresponsive. It is the responsibility of all licence holders and responsible authorities to ensure that licensed premises are not undermining the promotion of the licensing objectives and that licensable activity is carried out lawfully. The Authority will work with partners to determine what action is appropriate for each premises where issues are discovered. Each premises and the action required for each will be assessed on its own individual merits.

9.21 The Council, in determining a review application can take the following steps in order to promote the licensing objectives:

- modify the conditions on the licence
- exclude a licensable activity from the scope of the licence
- remove the designated premises supervisor
- suspend the licence for a period not exceeding three months
- revoke the premises licence

## **10. Summary**

Thames Valley Police have applied for this review to address the failures of the premises licence holder to promote the four licensing objectives due to their insufficient measures to ensure due diligence and full, reasonably expected, compliance of their licence conditions. Reading Borough Council's Licensing Team and an interested party have made representations in support of Thames Valley Police and concur that the failures of the premises licence holder must be addressed. Thames Valley Police and Reading Borough Council Licensing put forward that the appropriate and proportionate measure to take is to attach suggested conditions contained in their representations and for a period of suspension to allow the premises licence holder time to ensure that they are able

to comply with any new conditions.

## 11. Relevant Case law for consideration

The British Beer and Pub Association, The Association of Licensed Multiple Retailers, The British Institute of Innkeeping v Canterbury City Council [2005]

R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others (2011) EWCA Civ 312

East Lindsey District Council v Abu Hanif (t/a Zara's Restaurant) 2016

R (on application of Daniel Thwaites plc) v Wirral Magistrates' Court and Others (2008) EWHC 838 (Admin)

## 12. Appendices

**Appendix LIC-1: Review Application & Appendices.**

**Appendix LIC-2: Representation from Reading Borough Council Licensing Team.**

**Appendix LIC-3: Representation from Interested Party.**

**Appendix LIC-4: Additional Information from TVP.**

**Appendix LIC-5 : Current Premises Licence**

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