

LICENSING ACT 2003 HEARING ON THURSDAY 6 JUNE 2019 @ 9.30 HOURS

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE

1. Premises:

Pal Food & Wine
397 Oxford Road
Reading
Berkshire
RG30 1HA

2. Applicants Requesting Review:

Ian Savill on behalf of the Chief Inspector of Weights and Measures

3. Grounds for Review

The Trading Standards team as a responsible authority under the Licensing Act 2003 and under the licensing objectives of prevention of crime and disorder, the prevention of public nuisance, the protection of children from harm and public safety make application for the review of the premises licence for Pal Food and Wine, 397 Oxford Road, Reading.

A combination of criminal activity including a host of licence condition breaches unearthed during inspections the issues outlined below have led Reading Borough Council's Trading Standards team to taking this final serious step in reviewing the premises licence.

The premises was visited during the course of a joint operations with HMRC and a substantial quantity of illegal tobacco and alcohol was found on the premises. A few weeks later, the shop was visited during a Challenge 25 test purchase exercise when the 21 year old test purchaser was able to purchase alcohol without showing proof of age, in breach of the premises licence.

The premises licence holder has been in place since 2013. Trading Standards Service has had a number of interactions with the premises since that time, including:

31.03.2014 - complaint investigation into alleged selling of single cigarettes - open packet found behind till (claimed for personal use) - warning letter issued.

03.09.2014 - Failed a Community Alcohol Partnership (CAP) Challenge 25 test purchase exercise

11.09.2014 - shop visited during illegal tobacco detection exercise - none detected

03.11.2014 - complaint investigation into alleged counterfeit brandy - could not be verified as counterfeit

01.05.2015 - 2 bottles of duty diverted brandy seized - a letter warning of future conduct was sent to Mr Chopra.

17.02.2017 - Failed CAP Challenge 25 test purchase exercise.

24.07.2017 - Failed CAP Challenge 25 test purchase exercise - invited to attend free training session but did not attend.

01.10.2018 - mystery shopping exercise for illegal tobacco using a Romanian national, although no sale, a strong indication of availability was noted.

26.02.2019 - joint operation with the HMRC and Thames Valley Police. Packets of illegal cigarettes and alcohol were found in the premises.

14.03.2019 - a follow up visit took place and further alcohol was seized.

01.04.2019 - Failed CAP Challenge 25 test purchase exercise - the PLH attended free training on 9th April 2019.

Licensing team/TVP inspections and interactions with the premises.

The Licensing Authority fully support the application for the review of the premises licence for Pal Food and Wine at 397 Oxford Road, Reading. We also fully support the recommendation that the licence should be revoked.

Legislation, Case Law and Licensing Act 2003 Guidance

The sale or storage of smuggled goods on a licensed premises is an offence under paragraph 144 of the Licensing Act 2003. The goods were knowingly kept on the premises as some were concealed; they have not come from the legitimate supply chains; no invoices have been produced for them and they were then removed from the premises by the licence holder.

Paragraph 11.27 of the Secretary of State's Guidance to the Licensing Act 2003 lists some of the most serious criminal offences that can take place on licensed premises - namely using the premises for the sale or storage of smuggled tobacco or alcohol. Paragraph 11.28 goes on to say that this offence is so serious that the Licensing Authority should consider revoking the premises licence - even in the first instance.

It should be noted that paragraph 51 of the Licensing Act 2003 states that a review is of the premises licence and not the premises licence holder. Therefore the activities that have been carried on in accordance, or not in accordance, with a licence are what should be considered when determining a review application.

It should also be noted that in the High Court case (case stated) of East Lindsey DC v Abu Hanif it states:

That the licensing objectives require a prospective consideration of what is warranted in the public interest having regard to the twin considerations of prevention and deterrence.

On 03.09.2014, the Licensing team were informed by the Community Alcohol Partnership Officer that the premises had failed a Challenge 25 test purchase when alcohol was sold to an 18 year old with no ID being asked for. Whilst no offence of serving alcohol to a child took place, the premises is in breach of its licence condition in respect of operating a Challenge 25 age verification policy. A breach of licence condition is an offence under Section 136 (1) of the Licensing Act 2003.

On 01.05.2015, the Licensing team carried out a joint visit with the Community Alcohol Partnership officer (CAP) where two bottles of duty diverted brandy were found on the premises. As stated above, the sale or storage of duty diverted products on a licensed premises is an offence under Paragraph 144 of the Licensing Act 2003 and is listed at paragraph 11.27 of the Secretary of State's Guidance as one of the most serious criminal offences where revocation of a licence should be seriously considered even in the first instance. Licensing records also state that the premises were non compliant with the

licence conditions stated on the premises licence.

On 17.02.2017, the Licensing team were informed by the Community Alcohol Partnership Officer that the premises had failed another Challenge 25 test purchase. This is a breach of the Challenge 25 condition attached to the premises licence and is an offence under Section 136 (1) of the Licensing Act 2003.

On 24.07.2017, the Licensing team were informed by the Community Alcohol Partnership Officer that the premises had failed a third Challenge 25 test purchase - which, again, was a breach of the Challenge 25 condition stated on the premises licence. In response to this failure, the licence holder and staff were invited to attend some free training run by the Community Alcohol Partnership Officer. Unfortunately the licence holder or staff members did not attend.

On 25.07.2017, a joint Licensing team and Thames Valley Police visit to the premises found numerous conditions stated on the premises licence in breach and relevant documentation was unable to be provided. This included a lack of staff training; a contradictory age verification policy being in place with Challenge 18 and Challenge 25 posters; the inability to produce Part A of the premises licence and some other matters. A further concern was that the premises had been identified as one that was selling single cans of high strength beer and cider and customers were seen congregating outside the front of the premises drinking them.

On 20.10.2017, a joint Licensing team and Thames Valley Police visit to the premises found a number of the same conditions found in breach as per the previous visit carried out on 25.07.2017. Due to the persistent failure to comply with licence conditions; the failure of three Challenge 25 test purchases and the concerns around the sale of single cans of high strength beer and cider to street drinker, the premises licence holder was invited to a performance meeting at Reading Police Station on 01.11.2017.

On 01.11.2017, the premises licence holder attended a performance meeting at Reading Police Station. This meeting was held with PC Simon Wheeler and RBC Licensing Enforcement Officer Richard French. The meeting discussed the poor performance of the premises in relation to compliance and promotion of the licensing objectives. A number of conditions were proposed to be put on the licence which the authorities hoped may improve performance of the premises. The premises licence holder accepted these conditions to be placed on the licence.

On 25.02.2019, the Licensing team were informed by the Trading Standards Service of RBC that a significant quantity of duty diverted cigarettes and alcohol had been located at the premises during a visit that took place with HMRC.

On 14.03.2019, a joint visit took place between RBC Licensing and RBC Trading Standards team to the premises. It was noted that the suspected duty diverted alcohol had been removed from the premises by the premises licence holder. It was also noted that there were bottles of wine that were being sold well below the recommended retail price. This is detailed within the review paperwork submitted by Trading Standards. A Licensing inspection found, once again, that the condition in relation to staff training could not be demonstrated as being complied with; the CCTV system only recorded for 14 days and not the required 28 days and no invoices could be produced for alcohol products. These are all breaches of conditions and therefore an offence under the Licensing Act 2003.

On 01.04.2019, the Community Alcohol Partnership Officer informed the Licensing team that the premises had failed a fourth Challenge 25 test purchase.

The Enforcing Authorities have had repeated interactions with the premises licence holder yet there has been no noticeable improvement in performance. This has not only led to the committing of serious criminal offences in relation to the duty diverted alcohol/tobacco but has led to offences being carried out due to breaches of licence conditions and the undermining of the licensing objectives - notably the prevention of crime and disorder and the protection of children from harm. The Enforcing Authorities (Licensing/Trading Standards/Police/CAP Officer) have spent significant time trying to address these issues. A performance meeting held in November 2017 over the issues has not led to an improvement. Sample training records; the refreshing of conditions on the licence and the offer of free training from the CAP officer has seemingly not had any effect in terms of compliance. No satisfactory explanation or invoices have ever been received in relation to the two instances where duty diverted products were found on the premises.

Role of the designated premises licence holder(DPS)

The Licensing Act states the DPS is the person in day-to-day control of the licensed premises. The DPS must be a personal licence holder. They are the person nominated for the role by the premises licence holder and should be the person in day-to-day control of the premises. The DPS is required where the sale of alcohol by retail takes place and is the main point of accountability within premises where alcohol is sold. They should be easily identifiable by the police or other authorities as the person in charge of the premises. The role carries with it a great deal of responsibility. The DPS plays a key role in actively promoting the licensing objectives and in implementing the measures stated in the operating schedule and must ensure that the premises operate legally at all times.

Breach of premises licence conditions

Under the Licensing Act, every breach of condition is a criminal offence and means that licensable activity is being carried on not in accordance with an authorisation. Each breach of condition is contrary to Section 136 (1) of the Licensing Act 2003. It is worth remembering a further two points: Firstly, that conditions are attached to a premises licence as they are deemed appropriate and proportionate to promote the four licensing objectives at that premises. Secondly, the (updated) conditions currently attached to the premises licence have been on the licence since November 2017.

4. Date of receipt of application: 17.04.2019
A copy of the review application received is shown at <u>Appendix PN-1</u>
5. Date of closure of period for representations: 14.5.2019

6. Representations received:
During the 28 day consultation period, representations were received in regard to this review application from;
Thames Valley Police which is shown at <u>Appendix PN-2</u>
The Licensing Team is shown at <u>Appendix PN-3</u>

7. Background

The premises is located in West Reading on the main Oxford Road.

The Premises Licence Holder and the designated premises supervisor is stated as: Mr Aman Singh Chopra and has held both these positions since 13 August 2013

The premises currently has the benefit of a premises licence for the activities and hours detailed below: A copy of the current licence (LMV000284 dated 30/11/2017) is shown at **Appendix PN-4**

A plan showing the premises and surrounding area is shown at **Appendix PN-5**

Licensable Activities authorised by the Licence

Hours for the Sale by Retail of Alcohol - Off the Premises

Monday	from 0600hrs until 2300hrs
Tuesday	from 0600hrs until 2300hrs
Wednesday	from 0600hrs until 2300hrs
Thursday	from 0600hrs until 2300hrs
Friday	from 0600hrs until 2300hrs
Saturday	from 0600hrs until 2300hrs
Sunday	from 0600hrs until 2300hrs

Other

Hours the Premises is Open to the Public

Monday	from 0600hrs until 2300hrs
Tuesday	from 0600hrs until 2300hrs
Wednesday	from 0600hrs until 2300hrs
Thursday	from 0600hrs until 2300hrs
Friday	from 0600hrs until 2300hrs
Saturday	from 0600hrs until 2300hrs
Sunday	from 0600hrs until 2300hrs

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 application the sub-committee can take such of the 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 above 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:

1.5 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;

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 area⁵. 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.

Hearings

9.31 Regulations governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

9.38 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:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

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.

Powers of a licensing authority on the determination of a review

11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities.

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.

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.

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

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.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence - even in the first instance - should be seriously considered.

Reading Borough Council Licensing Policy Statement

1.5 The Council believes that good management of its vibrant entertainment, alcohol and late night refreshment industries, and of the street environment within which they operate, is essential to the continued success of Reading Town Centre and to attracting the wide range of people who want to come here to work, to visit and to live. However, the predominantly urban nature of the town and the significantly large proportion of young residents means that issues such as:

- (a) striking an appropriate balance between the needs of residents and the needs of businesses,
- (b) the control of underage drinking, and
- (c) the management of young and potentially immature drinkers,

are matters which are particularly relevant to the exercise of the Authority's licensing functions, and ones which applicants and existing licensees also need to consider.

7.15 Crime & Disorder Act 1998

7.15.1 In applying this policy, the Authority will have regard to its obligations under Section 17 of the Crime and Disorder Act 1998 and will do all that it reasonably can to prevent crime and disorder in Reading. The Authority will also have regard to the Safer Reading Partnership, which incorporates both local and national strategies and whose mission statement is "We will continue to make Reading a safer place for those who live, work and visit, through a reduction in crime and disorder". In addition the Authority will liaise with the Reading Crime Reduction Partnership in order to reduce crime, misuse of drugs and the fear of crime.

10.5 Review of Premises Licence

10.5.1 Any premises subject to a premises licence or club premises certificate may have that licence or certificate reviewed by the Licensing Authority on application by a responsible authority or interested parties. The Act provides strict guidelines as to the timescale and procedures to be adhered to and the Authority will deal with every review application on that basis.

15. Enforcement

15.1 General

15.1.1 Reading Borough Council and Thames Valley Police have established a joint enforcement approach. The protocols provide for the targeting of agreed problem and high-risk premises, with a lighter approach applied to well managed and maintained premises.

15.3 Inspections

15.3.1 The Authority will carry out routine inspections at all premises where a premises licence is in force. In addition, where a complaint or an application for a review of a premises licence is received, the premises will be inspected. The Council and Thames Valley Police will continue to liaise and may carry out joint inspections of premises. This partnership approach is intended to maximise the potential for controlling crime and disorder at licensed premises and ensure compliance with relevant licensing conditions.

Summary

In summary, the offences outlined in this review application are particularly serious. The selling and storage illicit alcohol and tobacco for financial gain is clearly an extremely serious criminal offence and one that the Licensing Act has identified as one where the revocation of the licence should - even in the first instance - be seriously considered. In this case illicit alcohol was found on more than one occasion. There are no acceptable excuses or justification that can be offered for this. A licence holder as a responsible trader should be checking their alcohol and tobacco stock to ensure it is lawful to sell.

Given the serious nature of the criminal offences carried out by Mr Aman Singh Chopra, the premises licence holder, at his premises; his non-compliance regarding of licence conditions, allowing this premises to continue to operate with the benefit of a premises licence will merely serve to perpetuate the criminal activity already apparent from the findings of the Trading Standards, Licensing Authority and Thames Valley Police. It is the Responsilbe Authorities respectful submission that the only appropriate and proportionate step to promote the licensing objectives and safeguard the public as a whole, is for the licence to be revoked.

Case law

High Court case (case stated) of East Lindsey DC v Abu Hanif