

BOROUGH OF KETTERING

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Report Originator	Russ Howell	Fwd Plan Ref No: N/A	
Wards Affected	William Knibb	5 th March 2014	
Title	Determination of application for review of a Licensing Act 2003 premises licence – Pauls Stop and Shop, Montagu Street, Kettering		

1. **PURPOSE OF REPORT**

To seek the Committee's decision on an application for review of a Licensing Act 2003 Premises Licence.

2. **INFORMATION**

- 2.1 An application for review of the premises licence for Pauls Stop and Shop, 54 Montagu Street, Kettering has been received from Northamptonshire Police. A copy of the review application is attached at Appendix A.
- 2.2 A copy of the current premises licence is attached at Appendix B.
- 2.3 Northamptonshire Police is a responsible authority for the purposes of the Licensing Act 2003 and may therefore legitimately call a review of a premises licence under Section 51 of Licensing Act 2003.
- 2.4 The grounds for the representation are that the premises has failed three test purchases within a three month period together with other evidence indicating sale of alcohol to persons who are drunk. As a result of the police operations, two persons are currently pending prosecution for offences under the Licensing Act 2003.
- 2.5 The premises licence for Pauls Stop and Shop was previously reviewed at a Licensing Committee hearing on 23 January 2013. On that occasion the grounds for the review application were
- concerns with the management of the premises
 - the adequacy of the Designated Premises Supervisor Mrs Nirmala Paul
 - evidence of an alcohol sale to a drunken person
 - failure to comply with the licence conditions

The review application also identified breaches with the premises licence conditions.

- 2.6 On that occasion the decision was as follows:

- That the Designated Premises Supervisor Nirmala Rani Paul be removed.
- That the following additional conditions be placed on the premises licence:-

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- The Designated Premises Supervisor shall possess a “National Certificate for Designated Premises Supervisors” or equivalent nationally recognised qualification approved by the licensing authority and the police prior to appointment.
- A personal licence holder shall be on duty at all times alcohol is for sale during trading hours.
- All staff shall be trained in relation to the sale of alcohol to drunks and underage persons and details of this training and training records are to be maintained and produced immediately to the licensing authority or police upon request.

2.7 The full hearing decision is attached at Appendix C.

2.8 The licensable activities on the Premises Licence are currently:

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Alcohol off	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00
Public opening hours	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00	07:00 – 07:00

2.9 A plan indicating the location of the premises is enclosed at Appendix D.

3. CONSULTATION AND CUSTOMER IMPACT

3.1 The Licensing Act 2003 requires that the responsible authorities are consulted in the event of a review application and the application is advertised outside the premises concerned for 28 days. The following were consulted:

Police	Review Application
Child Protection	No representation
Fire	No representation
Trading Standards	Representation
Customs and Excise	No representation
Environmental Health	No representation
Planning	No representation
Public Health	No representation
Public	No representation

3.2 The representation from Northamptonshire Trading Standards relates to the failure of the business at various test purchases to seek proof of age rather than asking how old the person is. (*Appendix E*)

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3.3 As part of the steps to promote the licensing objectives, since 2008 the Premises Licence has had within the operating schedule the requirement "Think 21 scheme will be operated. If a person seeking alcohol looks under 21 then they will be asked to produce PASS accredited proof of their age. If this cannot be produced the sale will be refused and a record made in the refusals register".

4. **POLICY IMPLICATIONS**

4.1 This section highlights the sections of the statement of licensing policy that are most relevant with respect to this application. This is not exhaustive and the policy should be looked at fully prior to making decisions with respect to applications. The paragraph numbers are as shown in the Statement of Licensing Policy :-

2.1 The Licensing Act 2003 makes it a duty for the local authority to carry out its functions under the Act with a view to promoting the four licensing objectives:

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

2.4 Licensing decisions will be made in accordance with the current legislation, case law, relevant guidance and in accordance with this policy.

2.5 No decision will be made which undermines the right of any individual to apply under the terms of the Act for a variety of permissions and to have any such application considered on its individual merits.

2.6 Authorised persons, interested parties and responsible authorities, as defined in the Act, will have the right to make representations to the Licensing Authority on any application or seek a review of a licence or certificate where provision has been made for them to do so in the Act. This Authority recognises that under the current licensing regime there is no provision for a Licensing Authority to make representations and in the absence of relevant representations will grant licenses on the terms sought.

2.7 Licensing is about regulating the provision of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Licensing Act 2003. The terms and conditions attached to various permissions will be focused on matters which are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places.

2.8 This authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. It must however be recognised that licensing legislation is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the licence, certificate or permission concerned.

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- 2.9 The Licensing Act 2003 is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises and, therefore, beyond the control of the licence holder. Nonetheless, it is a key aspect of such control and licensing laws will always be part of the holistic approach to the management of the evening and night-time economy in town centres.
- 2.11 The objective of the licensing process is to allow for the carrying on of retail sales of alcohol and the prevention of public nuisance, prevention of crime and disorder, public safety and protection of children from harm. It is the Licensing Authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 19.13 This Licensing Authority in determining what action to take will seek to establish the causes of concern and any action taken will be directed at these causes. Any action taken to promote the licensing objectives will be necessary and proportionate.

4.2 The guidance issued under Section 182 of the Licensing Act 2003 gives the following advice about review decisions (paragraph numbers from guidance):

- 11.18 *The licensing authority may decide that the review does not require it to take any further steps appropriate to promote 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.*
- 11.19 *However, where responsible authorities like 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.*
- 11.20 *Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*
- *to 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;*
 - *to 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);*
 - *to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
 - *to suspend the licence for a period not exceeding three months;*
 - *to revoke the licence.*
- 11.21 *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.*

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4.3 Section 17 of the Crime and Disorder Act 1998 requires that local authorities and others must consider crime and disorder reduction while exercising all their duties.

4.4 Having considered the application and representations before it, the Committee may decide to take no further action or consider action as detailed in section 52 of the Act in relation to determination of reviews which may be as follows:

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

5. FINANCIAL/RESOURCE IMPLICATIONS

5.1 There are no financial or resource implications

6. RECOMMENDATION

The Committee's decision is requested

Background Papers:

Previous Reports/Minutes:

Title of Document:

Licensing Act 2003
Section 182 Guidance to the Licensing Act 2003
Kettering BC Statement of Licensing Policy

Ref: None

Date:

Date:

Contact Officer: Russ Howell