

LICENSING SUB-COMMITTEE

DATE	1 April 2021
REPORT OF	Sharon Wroot – Executive Director for Environment, Economy & Resources
SUBJECT	Review of Premises Licence in respect of premises known as Cartergate News & Wine, 84a Cartergate, Grimsby, DN31 1RT
STATUS	Open

CONTRIBUTION TO OUR AIMS

Stronger Economy:

Support for premises that promote the licensing objectives through appropriate action against those that do not.

Stronger Community:

Reduce incidence of crime, anti-social behaviour and public nuisance associated with licensed premises

Promotion of public safety and child protection in relation to licensed premises.

EXECUTIVE SUMMARY

The Licensing Authority under the Licensing Act 2003 (“the Act”) has a duty to determine applications for any Licence under the Act where relevant representations have been made. This includes reviews. This duty has been delegated to the Licensing Sub-Committee. This case involves an application for a review of a premises licence by **PC 2249 Garry Chapman on behalf of the Chief Constable of Humberside Police** who assert that:-

The Licence Holder Mr Thambiah Rameshkumar is undermining the Prevention of Crime and Disorder and the Public Safety objectives of the Licensing Act 2003.

RECOMMENDATIONS

To determine the application for a review of the Premises Licence and consider any relevant representations under s.52 of the Act. To take such steps as considered **appropriate** for the promotion of the licensing objectives.

REASONS FOR DECISION

Must have regard to:-

- North East Lincolnshire Council’s Statement of Licensing Policy.
- Guidance issued by the Secretary of State under s.182 of the Act.

Steps taken must be **appropriate** for the promotion of the Licensing Objectives, namely:-

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

1. BACKGROUND AND ISSUES

These are fully contained in the report of Jo Bennett, Licensing Officer.

2. RISKS AND OPPORTUNITIES

Crime and Disorder – If the Sub-Committee finds this licensed premises has undermined the licensing objectives, it must consider what, if any, steps are appropriate to prevent this. If appropriate steps are not taken there is a risk that the licensing objectives will not be promoted.

Human Rights – The premises licence holder is entitled to a fair hearing; article 6 of the European Convention of Human Rights applies. Article 8, the right to respect for private and family life, also applies as the “licence” is crucial to the livelihood of the premises licence holder. The Human Rights of the wider community are also engaged.

Equality and Diversity – No direct effects

Value for Money – The aim must be to take action that prevents problems persisting and using further licensing resources.

The impact on the Social, Economic and Environmental well-being of the Borough – Action taken to ensure that all licensed premises promote the licensing objectives will have a positive impact in these respects.

Environmental Sustainability Implications - None

3. OTHER OPTIONS CONSIDERED

The steps which may be taken are:-

- (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.

The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to 3 months. It may also be decided that no action is necessary and consideration given to whether a warning should be issued to the licence holder and/or recommend improvement within a particular period of time.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

There are potential positive reputational implications for the Council resulting from the decision where appropriate action has been taken. An action plan has been agreed with the Council's communications service covering information requirements and communications channels to be utilised.

5. FINANCIAL CONSIDERATIONS

This report relates to a determination required in response to an application made under the Licensing Act 2003. The process is governed by statutory regulations and the fees involved are statutory. There are no direct resource or funding implications in the first instance but there may be on appeal (see Section 5).

6. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not applicable

7. FINANCIAL IMPLICATIONS

The premises licence holder, the responsible authorities and any relevant person have a right of appeal against the decision made to the Magistrates and/or High Court. If the Licensing Sub-Committee takes a step which is considered unnecessary or unlawful by a higher court there is a risk that an award of costs may be ordered against the Council in favour of the successful appellant. Such costs are difficult to quantify or estimate.

8. LEGAL IMPLICATIONS

These are covered in the body of the report of the Licensing Officer.

9. HUMAN RESOURCES IMPLICATIONS

There are no Human Resource Implications.

10. WARD IMPLICATIONS

West Marsh

11. BACKGROUND PAPERS

Please refer to the index of Members Papers.

12. CONTACT OFFICER(S)

Jo Bennett, Licensing Enforcement Officer, Tel: 01472 323826

Sharon Wroot
Executive Director for Environment, Economy & Resources



LICENSING ACT 2003

REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF AN APPLICATION TO REVIEW A PREMISES LICENCE

**Cartergate News and Wine
84A Cartergate
Grimsby
North East Lincolnshire
DN31 1RT**

NORTH EAST LINCOLNSHIRE COUNCIL
LICENSING AUTHORITY

LICENSING ACT 2003

Report to Licensing Sub-Committee
following receipt of an Application to Review a Premises Licence

1. Premises Licence Details -

- 1.1 Premises:** Cartergate News & Wine
- 1.2 Premises licence holder:** Thambiah Rameshkumar
- 1.3 Relevant licensable activity authorised by the premises licence:**
Supply of Alcohol
- 1.4 Times when the relevant licensable activity is permitted by the premises licence:**

Please see attached Premises Licence
- 1.5 Designated Premises Supervisor:** Thambiah Rameshkumar

2. Summary of Review Application –

(Full details are set out on the review application form and supporting statements are attached)

The following information is also included: -

Exhibit 01 - Premises Licence
Exhibit 02 - Premises Review Application
Exhibit 03 - Statement of PC 2249 Garry Chapman
Exhibit 04 - 2009 Licensing Subcommittee Decision
Exhibit 05 - 2009 Decision Appeal Consent Order (2010)
Exhibit 06 - 2011 Licensing Subcommittee Decision
Exhibit 07 - 2019 Licensing Subcommittee Decision
Exhibit 08 - Arka Email to Humberside Police
Exhibit 09 - Not included within the bundle – CCTV evidence to be viewed in private at the Review Hearing

- 2.1 Date review application received:** 5 February 2021
- 2.2 Person making application for review:** PC 2249 Garry Chapman on behalf of the Chief Constable of Humberside Police

2.3 Licensing objective affected:

- The Prevention of Crime and Disorder
- Public Safety

3. Representations –

- 3.1** There were no representations from any of the Responsible Authorities or from Interested Parties.

4. Statement of Licensing Policy -

The following sections of North East Lincolnshire Council's Statement of Licensing Policy are considered relevant to this review application:

Licensing Objectives: 2.0 – 2.4, 9.1 – 9.1.9

Conditions: 6.1.4

Premises Licence: 8.2.1 – 8.2.4

Representations: 8.7.1 - 8.7.4

Reviews: 8.8.1 - 8.8.2, 8.8.5 - 8.8.6

Prevention of Crime and Disorder: 9.2.1 – 9.2.3. 9.2.5 – 9.2.7

Public Safety: 9.3.1, 9.3.4

Enforcement 8.9.1, 8.9.3

5. Guidance issued under Section 182 of the Licensing Act 2003 –

This guidance is provided for Licensing Authorities carrying out their functions. It is regarded by the Government as a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. It does not however replace any statutory provisions of the 2003 Act and it is for the Licensing Authority to take their own professional and legal advice about its implementation.

The following sections of the Guidance are considered to be relevant to this review application:

Crime and Disorder 2.1, 2.3, 2.5

Public Safety 2.7

Reviews 11.1 – 11.11, 11.16, 11.18 – 11.22

6. General Advice on Determination of the Application –

- 6.1** The sub-committee are advised that findings on any issues of fact should be on the balance of probability.

- 6.2** The sub-committee are advised that in arriving at any decision, it must

have regard to relevant provisions of national guidance and North East Lincolnshire Council's Statement of Licensing Policy. Reasons must be given for any departure.

- 6.3 The sub-committee are advised that the final decision should be based on the individual merits of the application and the factual findings made at the hearing.

- 6.4 Section 52 of the Act states that the Licensing Authority must, having regard to the application for review and any relevant representations, take such of the steps set out below as it considers **appropriate** for the promotion of the licensing objectives:
 - Modify the conditions of the licence (i.e. alter, omit or modify conditions).
 - Exclude the licensable activity from the scope of the licence.
 - Remove the designated premises supervisor.
 - Suspend the licence (or an aspect of it) for a period not exceeding 3 months.
 - Revoke the licence.

- 6.5 The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to 3 months. It may also be decided that no action is necessary and consideration given to whether a warning should be issued to the licence holder and/or recommend improvement within a particular period of time.

- 6.6 Conditions should be proportionate to the size, style and characteristics of the premises and the activities proposed or taking place and must be **appropriate**.

- 6.7 Paragraph 11.20 of the Section 182 guidance recommends that in deciding which powers to invoke, Licensing Authorities should so far as possible seek to establish the cause or causes of the identified problem and direct proportionate responses at these areas as a means of remedial action.

- 6.8 Paragraph 11.18 of the Section 182 guidance points out that it may be the case that the Licensing Authority decides that no further steps are necessary in order to promote the licensing objectives or that an informal warning is considered sufficient. However it also states that where responsible authorities have already issued warnings that have not been heeded, this approach should not be repeated.

- 6.9 The sub-committee are advised that they must take into account the following Human Rights provisions:

- Everyone is entitled to peaceful enjoyment of their possessions (includes licences), although a person can be deprived of their possession if it is in the “public interest”.
- Everyone affected by a decision has a right to a fair hearing.
- Everyone has the right to his private and family life, his home and his correspondence.

6.10 The sub-committee, in its decision making, must have due regard to its public sector equality duty under section 149 of the Equality Act 2010

7. Observations –

- 7.1** Since Mr Rameshkumar became the holder of the Premises Licence in 2007, there have been several issues in relation to both Crime and Disorder and The Protection of Children from Harm. This has included reports of staff threatening and/or chasing customers from the property on a number of occasions, and once whilst staff members were in the possession of a knife. There have also been reports of underage alcohol sales and youths in drink causing problems around the premises.
- 7.2** In 2009 the Premises Licence was taken to review due to police evidence that both underage alcohol sales and sales to drunken street drinkers were being made by the premises. As a result of the subsequent Licence Hearing the Premises Licence was revoked due to the serious nature of this evidence. Following an appeal, by Mr Rameshkumar to the Magistrates Court, a Consent Order was made which reversed the decision to revoke the licence subject to new conditions which meant the premises could again sell alcohol.
- 7.3** In 2011, the premises were again referred to the Licensing Committee for selling to intoxicated members of the public. However, in this instance the committee found it difficult to attribute all the issues in the area to the premises so no further action was taken. Since this review the Premises, along with others in the area, has received a warning letter from North East Lincolnshire Council Licensing Department requesting they cease sales of alcohol to intoxicated customers.
- 7.4** In May 2019 a serious incident occurred in which, following the victims attempt to buy alcohol and a subsequent argument on the premises, a member of staff hit a customer on the head with the claw hand of a hammer. The member of staff was arrested on suspicion of GBH – wounding with intent to do grievous bodily harm in relation to this incident. However, at the time of the review in 2019 this member of staff remained employed by the Licence Holder which surprised and concerned the Licensing Subcommittee.

- 7.5** Following the above incident Licensing Officers from Humberside Police made a visit to the premises to speak to Mr Rameshkumar with regards to the incident and to find out what training staff have had with regards to conflict management. It was whilst on this visit that both a full-size plastic cricket bat and a pointed end ornamental sword were found by the Officers behind the counter. Whilst Mr Rameshkumar did have a lawful reason for having the cricket bat, he did not have one for the sword, so it was confiscated and destroyed.
- 7.6** It was also during the above visit that clear breaches of the Premises Licence became apparent.
- The first being that from 1/09/2010 all sales of alcohol made after 10:00 hours shall be made by a Personal Licence Holder.
 - The second being that the summary Premises Licence is required to be displayed at all times and the full Premises Licence should be on the premises at all times
- 7.7** In 2019 Mr Rameshkumar had been asked on at least two occasions by Humberside Police to remove images of people from his shop window that he claimed had been stealing items from his shop. He had displayed these images with accompanying words of “human trash” and “human scum”. This shows failure to follow reasonable requests from Humberside Police.
- 7.8** In November 2020 Police became aware that a known male was regularly committing shop thefts in Grimsby Town Centre. This same male had also been identified as regularly attending Cartergate News & Wine immediately after these occurrences. CCTV footage and subsequent visits to the shop by Humberside Police along with interviews held with Mr Rameshkumar confirmed that Mr Rameshkumar was buying goods from the known male to sell in his shop that he admitted he was aware had been stolen from other premises. Whilst there is no evidence that any of the shop staff were directly involved, it would appear from CCTV footage that they were aware of what was going on.
- 7.9** On 7 January 2021, Mr Rameshkumar asked PC Chapman if he was planning to review the premise licence for Cartergate News & Wine. He was informed that, as it was considered his actions had seriously undermined the licensing objectives, that an application would be sent to North East Lincolnshire Council imminently. However, before this application could be made, applications were received by the council to transfer and vary the dps to Mrs Rameshkumar. Humberside Police believe these applications were made to frustrate the licensing process and to prevent the review from happening. Humberside Police objected to both these applications and a hearing was arranged, however the applications were subsequently withdrawn.

7.10 Whilst the Sub Committee considered revoking the premises licence at the review hearing held in 2019, they were persuaded by Mr Rameshkumar that adding conditions should deal with underlying problems and promote the licensing objectives moving forward. However, they did reiterate to Mr Rameshkumar that he had come very close to losing his livelihood and he was being given one last chance, furthermore the starting point of any future review would be the revocation of his premises licence.

7.11 In the Guidance issued under Section 182 of the Licensing Act 2003, s.11.18 ascertains that

“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”

7.12 The view of the Chief Constable is that the premise has had a troubled past both historically and more recently. Most, if not all the incidents, have resulted in police investigation with a positive outcome as well as leading to a local authority licensing sub-committee review hearing.

7.13 Humberside Police are extremely concerned that Mr Rameshkumar and those connected with the premises would continue to engage in criminality if the Premises Licence was not revoked. Consequently, the Chief Constable requests that the Licensing Sub-Committee not only considers all points made but seriously considers the final words of the 2019 review hearing and revoke the premises licence.

Report prepared by:

Jo Bennett, Licensing Enforcement Officer

10 March 2021