

REPORT TO:	LICENSING ACT 2003 SUB-COMMITTEE
DATE:	03 MAY 2022
SUBJECT:	APPLICATION FOR A PREMISES LICENCE – PREMIER STORE, 103-105 NEWMARKET, LOUTH, LN11 9EG
PURPOSE:	To consider a representation made by Lincolnshire Police in respect of a premises licence application for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
KEY DECISION:	Not Applicable.
REPORT OF:	Service Manager – Safer Communities
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer)
WARD(S) AFFECTED:	Louth
EXEMPT REPORT?	<p>The content of this Report is not exempt from publication.</p> <p>However, a confidential evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack is exempt from publication – the pack is not for publication by virtue of Paragraphs 1, 2 & 7 of Part I of Schedule 12A of the Local Government Act 1972.</p>

SUMMARY

This report considers an application by Mr Janushanth Thuraisingamm for a premises licence in respect of a convenience store known as Premier Store (previously known as Costcutter), 103-105 Newmarket, Louth, LN11 9EG. The licence application is seeking authorisation for the supply of alcohol (for consumption off the premises) – the application is seeking licensing hours of 0600 to 2300 Hours. The opening hours of the premises will also be 0600 to 2300 Hours.

One representation, regarding the licence application, has been received from Lincolnshire Police (who are acting as a Responsible Authority under the Licensing Act 2003).

RECOMMENDATIONS

The Sub-Committee must consider the application for a premise licence and having regard to the representation made by the Responsible Authority, take such of the steps mentioned below (if any), as they consider appropriate for the promotion of the licensing objectives. The steps are:

- To grant the licence subject to:
 - a) Conditions consistent with the operating schedule accompanying the application, which have been modified to such extent as the Licensing Authority considers necessary for the promotion of the licensing objectives, and
 - b) Any mandatory licence conditions.
- To exclude from the scope of the licence any licensable activities to which the application relates.
- To reject the application.

If none of the above steps are considered appropriate the premises licence application should be granted in the form it was made.

REASONS FOR RECOMMENDATIONS

The Licensing Authority must hold a hearing to consider the representation - unless the representation is withdrawn by the Responsible Authority.

All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003. The 2003 Act sets out the steps which the Licensing Authority may take when considering a representation regarding a premises licence application.

OTHER OPTIONS CONSIDERED

Not Applicable - Under the terms of the Licensing Act 2003 this Authority must consider the representation and the premises licence application.

1. BACKGROUND

1.1. Premises Licence Applicant: Mr Janushanth Thuraisingam

1.2. Application: The application is for a premises licence under Section 17 of the Licensing Act 2003.

1.3. Premises: A convenience store known as Premier Store (previously known as Costcutter), 103-105 Newmarket, Louth, LN11 9EG. A plan showing the location of the Premier Store is attached at **Appendix A** of this Report. A site plan of the store is attached at **Appendix B**.

1.4. The premises licence application seeks to authorise the sale of alcohol (for consumption off the premises) during 0600 to 2300 Hours. The opening hours of the premises will also be 0600 to 2300 Hours.

1.5. Proposed Designated Premises Supervisor (DPS): The proposed DPS is Mr Janushanth Thuraisingam. Mr Thuraisingam has indicated on the premises licence application form that he has applied for a personal licence with Nuneaton and Bedworth Council. At the time of the drafting of this Report the Licensing Team were still awaiting confirmation from Nuneaton and Bedworth Council as to whether or not a personal licence had been granted.

2. REPORT

2.1. As required under the terms of the Licensing Act 2003 the premises licence application has been advertised in the local newspaper and also outside the premise. Details of the application were also displayed on the Council's website. Persons, including those living and/or operating businesses in the vicinity of the premise, and the Responsible Authorities (e.g. Lincolnshire Police, Trading Standards, Health and Safety, etc.), were permitted to submit representations regarding the licence application. Any representation must relate to one or more of the licensing objectives:

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

2.2. Lincolnshire Police have made a representation in relation to the premises licence application. A redacted copy of the representation is attached at **Appendix C** of this Report. The Police's representation has been issued on the grounds of the prevention of crime and disorder licensing objective. A unredacted copy of the representation will be forwarded to the Sub-Committee in a confidential evidence pack. Both the Police's and the licence applicant's evidence packs will be forwarded to the Sub-Committee separate to this Report.

2.3. The Premier Store does not currently hold a premises licence. A premises licence was previously held at the store - however, that licence was revoked by a Licensing Sub-Committee premises licence review hearing held on 14 July 2021. The revocation decision was not appealed to the Magistrates Court. The decision notice from 14 July 2021 premises licence review hearing is attached at **Appendix D** of this Report.

2.4. The premises licence review held on 14 July 2021 related to an illegal worker who was found to be working at the premise. In addition, the Sub-Committee heard details from Lincolnshire Police of other issues initially encountered at the premises during a compliance visit, namely:

- stock without price labels,
- staff were unable to work the CCTV,
- CCTV operating not in accordance with requirements,
- no written authorisation from the Designated Premises Supervisor (DPS) for other staff to sell alcohol.

2.5. The Sub-Committee noted how there had been some improvements undertaken at the premise following this first Police visit:

- price labels were now shown,
- staff were able to work the CCTV,
- a written authorisation was now in place,
- along with some evidence of staff training.

2.6. Mr Janushanth Thuraisingam was not the premises licence holder at the time of the review in 2021. The person occupying the premises at that time was a Mr Kirushanth. When making this licence application Mr J Thuraisingam indicated that he had now taken over the business. However, Lincolnshire Police have expressed concerns that Mr Kirushanth appears to be still involved in the day-to-day management of the business.

2.7. **Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003:** It is considered that the extracts from the national guidance, shown at **Appendix E** of this Report, have a bearing upon the premises licence application.

2.8. The Home Office Section 182 Guidance indicates that the Police should usually be the Licensing Authority's main source of advice on matters relating to the prevention of crime and disorder licensing objective. However, the Police must ensure that their representations can stand up to scrutiny at a licensing hearing. The relevant section of the Home Office Guidance is detailed below:

THE ROLE OF RESPONSIBLE AUTHORITIES

Paragraph 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.

2.9. **Local Policy Considerations:** It is considered that the extracts from the Local Policy, shown at **Appendix F** of this Report, have a specific bearing upon the premises licence application. The detailed licence conditions, volunteered by the applicant, as part of the licence application process can be found at **Appendix G** of this Report. The steps include the provision of CCTV, a Challenge 25 Proof of Age Scheme, staff training and a sales refusals log. All of the aforementioned steps are considered good practice and recommended within this Authority's Licensing Policy. In relation to the prevention of illegal workers, this Authority has in the past, where considered appropriate, placed the following licence condition on particular premises licences where concerns have arisen:

- Right to work checks shall be conducted on all potential employees prior to their employment in any capacity at the venue. Checks shall be in accordance with the Home Office Code of Practice for employers as current at that time.

3. CONCLUSION

- 3.1. The Licensing Act 2003 sets out options which the Licensing Authority can utilise in order to promote the licensing objectives following the consideration of a premises licence application (which has received a valid representation). Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives. The licensing objectives are detailed in Paragraph 2.1 of this Report.
- 3.2. The steps open to the Sub-Committee include refusing to grant a premises licence. Alternatively, there is the option of modifying the conditions of the licence application. Such a step or any other amendment to the licence application must only be taken if the Sub-Committee are persuaded that there is clear potential for harm resulting from the use of the premises in the licence application's current form. If the Sub-Committee considers that there is no potential for harm and no steps are necessary then the licence application should be granted in the form it was made.
- 3.3. The Sub-Committee should examine the potential for harm and if it is satisfied that this is real, it should take sufficient and reasonable measures to prevent this harm from occurring. The Sub-Committee should only refuse the licence application if it is of the opinion that no lesser step would ensure compliance with the licensing objectives.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CORPORATE PRIORITIES

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

STAFFING

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

1. The Sub-Committee must consider the application for a premise licence and having regard to the representations, take such of the steps mentioned below (if any), as they consider appropriate for the promotion of the licensing objectives. The steps:

- To grant the licence subject to:
 - a) Conditions consistent with the operating schedule accompanying the application, which have been modified to such extent as the Licensing Authority considers necessary for the promotion of the licensing objectives, and
 - b) Any mandatory licence conditions.
- To exclude from the scope of the licence any licensable activities to which the application relates.
- To reject the application.

If none of the above steps are considered appropriate the application should be granted in the form it was made.

2. The licensing objectives are:

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

3. Both the applicant and any person / body making representations may appeal any decision made by the Sub-Committee to the Magistrates Court. On determining an appeal, the Court may:

- Dismiss the appeal.
- Substitute for the decision appealed any other decision which could have been made by the Licensing Authority, or
- Remit the case to the Licensing Authority to dispose of in accordance with the direction of the Court.

4. The conditions of the licence are modified if any of them are altered or omitted or any new condition is added. Conditions can only be attached to a premises licence if they are considered appropriate for the promotion of the licensing objectives.

5. If consideration is being given to attaching conditions, Members should consider, are the proposed conditions:

- Appropriate;
- Relevant;
- Relevant to the activity/premises/venue;
- Enforceable;
- Precise;
- Reasonable, and
- Achievable.

6. The breach of a premises licence condition is an offence punishable (if the Licensing Authority or Lincolnshire Police are minded to prosecute) by an unlimited fine and/or six months imprisonment.

DATA PROTECTION

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

FINANCIAL

The processing of this premises licence application is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved. The premises licence application fee in this case is £190.00.

As with all licence applications it is possible that if a Licensing Committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

RISK MANAGEMENT

There is a theoretical risk of civil action against the Licensing Authority if it is found not to have exercised due diligence in licensing matters.

STAKEHOLDER / CONSULTATION / TIMESCALES

The representation from the Responsible Authority was received within the requisite 28-day period.

REPUTATION

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CONTRACTS

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CRIME AND DISORDER

All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

Equality Implications: There are no equality implications arising from the recommendations of this Report.

Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The premises applicant is entitled to a fair hearing; Article 6 of the European Convention on Human Rights applies. The Human Rights of the wider community are also engaged.

Safeguarding Implications: There are no specific safeguarding implications arising from the recommendations of this Report.

HEALTH AND WELL BEING

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

ACRONYMS

DPS - Designated Premises Supervisor

APPENDICES	
Appendices are listed below and attached to the back of the report: -	
APPENDIX A	Location plan of the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX B	Internal Plan of the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX C	Representation submitted by Lincolnshire Police in respect of the premises licence application for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX D	Decision Notice – Revocation of the premises licence for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX E	Extracts from the Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003.
APPENDIX F	Extracts from the Local Licensing Policy Statement.
APPENDIX G	Extract from the Premises Licence Application – Steps the Applicant Intends to Take to Promote the Licensing Objectives.

BACKGROUND PAPERS	
Background papers used in the production of this report are listed below: -	
Document title	Where the document can be viewed
Guidance issued by the Home Office to Licensing Authorities under Section 182 of the Licensing Act 2003	https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003
The Council's Statement of Licensing Policy adopted under the Licensing Act 2003.	https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

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Approved for publication:	Not Applicable.