

REPORT TO:	LICENSING ACT 2003 SUB-COMMITTEE
DATE:	12 SEPTEMBER 2022
SUBJECT:	REVIEW OF A PREMISES LICENCE – ARCADE MINI-MARKET, 2 SANDBACK ARCADE, DRUMMOND ROAD, SKEGNESS, PE25 3DY
PURPOSE:	This Report considers an application by Lincolnshire Police for a review of the premises licence held in respect of the shop premises known as Arcade Mini-Market, Skegness.
KEY DECISION:	Not Applicable.
REPORT OF:	Service Manager – Safer Communities
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer)
WARD(S) AFFECTED:	Skegness.
EXEMPT REPORT?	The content of this Report is not exempt from publication. 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 The evidence pack is exempt from publication – the pack is not for publication by virtue of Paragraphs 1, 2 & 7 of Part I of Schedule 12A of the Local Government Act 1972.

SUMMARY

This Report considers an application by Lincolnshire Police for a review of the premises licence held in respect of the Arcade Mini-Market, 2 Sandbeck Arcade, Drummond Road, Skegness, PE25 3DY. The review application has been submitted by Lincolnshire Police under the provisions of Section 51 of the Licensing Act 2003.

The review is the result of a Police compliance check during which a person at the premise was identified as holding no permission to work in the UK.

The Home Office guidance to Licensing Authorities states that there are certain criminal activities which should be treated particularly seriously by a Licensing Authority, one of these is knowingly employing a person who is not entitled to work in the UK.

This Authority's licensing policy stresses that in cases when the crime prevention objective is being undermined it can be expected that revocation of the premises licence will be seriously considered.

The application for review has not attracted representations from the other Responsible Authorities.

RECOMMENDATIONS

The Sub-Committee must consider the application for review of a premises licence and having regard to the application, take such of the steps mentioned below (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the Designated Premises Supervisor (DPS)
- To suspend the licence for a period not exceeding three months
- To revoke the licence

The Sub-Committee may also consider issuing a warning to the licence holder and/or to recommend improvement within a particular period of time.

If none of the above steps is considered appropriate the premises licence should remain in the form it was granted.

REASONS FOR RECOMMENDATIONS

The Licensing Authority has a duty to consider the status of premises licences where reviews have been submitted by Responsible Authorities. All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003.

The Sub-Committee must consider the application for review of the premises licence and having regard to the application, take such steps as it considers appropriate for the promotion of the licensing objectives.

OTHER OPTIONS CONSIDERED

Under the terms of the Licensing Act 2003 this Authority must consider the premises licence review. There is no other option but to undertake and complete the review of the premises licence.

1. BACKGROUND

1.1. Premises Licence Details:

Licence Holder Details: Mr Ali Kayran

Premises: Arcade Mini-Market, 2 Sandbeck Arcade, Drummond Road, Skegness, PE25 3DY

Designated Premises Supervisor (DPS): Mr Ali Kayran

1.2. This case involves an application for a review of a premises licence (Section 51 of the 2003 Act refers) by Lincolnshire Police. The Police have indicated that in their view the

application to review relates to the prevention of crime & disorder and protection of children from harm licensing objectives. A copy of the application for review is attached at **Appendix C** of this Report. The premise has not been subject of any previous premises licence reviews. But the premises was subject of a premises licence variation hearing on 23 January 2017 – see Paragraphs 2.19 to 2.21 of this Report.

2. REPORT

- 2.1.** The Licensing Authority has a duty to consider the status of premises licences where reviews have been submitted by Responsible Authorities or other relevant parties. This duty has been delegated to the Licensing Sub-Committees of the Full Licensing Act 2003 Committee.
- 2.2.** This review is the result of a joint Police and Immigration Officer operation on 15 June 2022 during which a person at the premise was identified as holding no permission to work in the UK. The Police are asking the Licensing Authority to consider the revocation of the premises licence. The Home Office Section 182 Guidance to Licensing Authorities states that there are certain criminal activities which should be treated particularly seriously by a Licensing Authority, one of these is knowingly employing a person who is not entitled to work in the UK. The guidance goes on to say:

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.

The Police review application also includes reference to a premises licence compliance check that was undertaken during the visit to the premise on 15 June 2022 – the check showed a level of non-compliance with requirements of the licensing regime. That is out of date staff training and the sales refusal register was not being maintained – both of which are conditions attached to the premises licence.

- 2.3.** The business in question is a convenience store and off licence offering alcoholic beverages for sale. Mr Ali Kayran has held the premises licence for the business since December 2015. He has also held the Designated Premises Supervisor (DPS) role for the site since that date. His personal licence was granted by the East Riding of Yorkshire Council.
- 2.4.** The premise is currently licensed to undertake the supply of alcohol for consumption off the premises. A plan showing the location of the business can be found at **Appendix A** of this Report. A plan showing the internal layout of the premises can be found at **Appendix B**. A full extract from the premises licence for the business can be found at **Appendix D** of this Report.
- 2.5.** In relation to the role of DPS this Authority is of the view that the main purpose of the DPS is to ensure that there is always one specified individual, among the personal licence holders at a premise, who can be readily identified for the business where the sale of alcohol is permitted. The premises licence holder will normally have given that person day-to-day responsibility for running the premises.

- 2.6.** A copy of the Police's application for premises licence review (including the grounds for the review) can be found at **Appendix C** of this Report. The review application is accompanied by supporting documentation and evidence. A copy of the evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. Copies of any evidence pack, submitted by premises licence holder, in support of his case and any additional evidence submitted by the Police, will also be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report.
- 2.7.** As required under the terms of the Licensing Act 2003 the review application has been advertised outside the premise, at the Council's Tedder Hall Offices and on the Council's website, for a period of 28 consecutive days. The Responsible Authorities (e.g., Lincolnshire Trading Standards, the Council's Environmental Health Team, etc.) and other relevant parties were permitted to submit representations regarding the review application. Any representation, made in relation to the review, must relate to one or more of the licensing objectives. The closing date for representations was 18 August 2022.
- 2.8.** The application for review did not attract representations from the other Responsible Authorities. No representations were received from other parties (e.g., local residents and businesses).
- 2.9. Right to Work Licence Conditions:** There are a number of options available to the Licensing Sub-Committee in relation to the premises review (see the Legal Implications Section of this Report). Such options include the revocation or suspension of the licence or the addition of licence conditions. However, licence conditions should not normally duplicate existing legislation. Therefore, this Authority should not actively seek to place conditions on premises licences which replicate in detail the legal responsibilities which an employer already holds in relation to the checking of a prospective employee's right to work in the UK. Employers must by law ensure that no new member of staff is able to work at the business unless they have provided satisfactory proof of identification and right to work.
- 2.10.** However, whilst bearing the contents of Paragraph 2.9 in mind, the Sub-Committee may wish to note the contents of the following Home Office Guidance Document: *Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales (April 2017)*. The document states the following:
- If appropriate, Home Office (Immigration Enforcement) will consider whether to request that conditions be attached to the licence. This will be the case where the conditions are considered appropriate to promote the licensing objective of preventing crime and disorder, including immigration crime and illegal working in licensed premises.*
- Conditions that are considered appropriate for the prevention of illegal working in licensed premises may include mandating a premises licence holder to undertake right to work checks on all staff employed at the licensed premises and requiring that a physical copy of any document checked as part of a right to work check is retained at the licensed premises, or a digital copy be immediately accessible from the premises.*

A complete copy of the above guidance document can be found on the GOV.UK website at the link shown under Background Papers at the end of this Report.

- 2.11.** With this in mind, if the Sub-Committee is minded for the premises licence to remain in force, then Members may wish to consider whether the imposition of both or one the following conditions (or similar worded conditions), would be relevant and suitable to the premises licence in this particular case:

Checking of Prospective Employees Right to Work in the UK

- Right to work checks shall be conducted on all potential employees prior to their employment in any capacity at the business. Checks shall be in accordance with the Home Office Code of Practice for employers as current at that time.
- The premises licence holder will operate a full digital HR management system where all relevant documents are stored for each individual member of staff. All relevant documents for members of staff will be retained for a period of 12 months post termination of employment and will be made available to Police, Immigration or Licensing Officers on request.

- 2.12. Yellow Card / Red Card:** Officers would remind the Sub-Committee that this Authority has adopted a 'yellow card' and 'red card' approach to the review of premises licences. This approach indicates that following an application for review of a premises licence by a Responsible Authority a yellow card warning from the Licensing Authority (if considered warranted by the Licensing Authority) would put the problem premises on immediate probation together with tough and uncompromising sanctions. The approach goes on to indicate that when the circumstances are right, the Licensing Authority would issue a straight red card leading to withdrawal of the premises licence

- 2.13. Local Policy Considerations:** It is considered that the extracts from the Local Policy, shown at **Appendix E** of this Report, have a specific bearing upon the premises licence review application.

- 2.14. 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 F** of this Report, have a bearing upon the premises licence review application.

- 2.15.** 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.

2.16. Premises Licence Review - Options Available: There are a number of options available to the Licensing Sub-Committee in relation to the premises licence review (see the Legal Implications Section of this Report). Such options include the revocation or suspension of the licence or the addition of licence conditions.

2.17. The advice from Officers is that when determining a premises licence review in circumstances involving criminal conduct, consideration should be given to both of the following:

- what is necessary to promote the objective of crime prevention
- the needs of the wider community

The Committee's consideration should not be limited to:

- guidance
- remedial action
- the needs of the licence holder

The Licensing Authority is able to take steps in the interests of the wider community where licensed premises had been used for criminal purposes – it will be appropriate, in some instances, for the Licensing Authority to take action, such as a licence suspension, which is designed, if not to be a punishment, at least to be a deterrent. The maximum suspension period available to the Committee is three months.

2.18. If Members are minded to issue a period of licence suspension, then Officers would suggest that such a period should be of such length to act as a deterrent but not be sufficiently long to be viewed as excessively punitive. In addition, any suspension should be accompanied by a clear warning that any further appearance before a Sub-Committee will have serious and clear repercussions for the status of the premises licence.

2.19. Refusal of Application to Extend Licensing Hours: For information, the Sub-Committee is advised that on 23 January 2017 this Authority refused an application to extend the licensing hours at the premises subject of this Report. The 23 January 2017 licensing hearing followed from a representation made by Lincolnshire Police – neither the applicant nor his representative attended the hearing. A copy of the decision notice from the hearing can be found at **Appendix G** of this Report.

2.20. The Police submission included reference to compliance visits to the premise, which have shown a level of non-compliance with a number of requirements of the licensing

regime. The Police submission indicated that the business had failed a test purchase operation in March 2016, during which alcohol was sold to a child. In addition, a compliance visit to the premise on 5 December 2016 found the following issues:

- The CCTV hard drive was not positioned in a tamper proof position – it was stored where the public could gain access to it.
- There was not signage asking patrons to leave the premises and area quietly – it is a condition of the premises licence that such signage is displayed.
- A copy of the premises licence was not held on site.
- The premises licence holder had not advised the Licensing Authority of his change of residential address.

2.21. The premise is situated within an area of Skegness covered by the night time economy. At times this area can experience problems of anti-social and behaviour fuelled by the consumption of alcohol. The Police were of the opinion that allowing the requested extension of licensing hours would add to these existing problems.

3. CONCLUSION

3.1. The Licensing Act 2003 sets out a range of options which the Licensing Authority can utilise in order to promote the licensing objectives following the consideration of a premises licence review. The licensing objectives are:

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

Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report with no relevance to the South & East Lincolnshire Councils Partnership.

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

The power to review a premises licence is designed to provide the Licensing Authority with a suitable mechanism to tackle problems that may subsequently arise once a premise is licensed.

The Sub-Committee must consider the application for review of a premises licence and having regard to the application, take such of the steps mentioned below (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

- To modify the conditions of the licence.
- To exclude a licensable activity from the scope of the licence.
- To remove the Designated Premises Supervisor (DPS).
- To suspend the licence for a period not exceeding three months.
- To revoke the licence.

The Sub-Committee may also consider issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. If none of the above steps is considered appropriate the licence should remain in the form it was granted.

DATA PROTECTION

There are no specific data protection implications arising from the recommendations of this Report.

FINANCIAL

This licence application is being processed as part of the normal duties carried out by the Licensing Team with no additional costs involved

RISK MANAGEMENT

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.

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

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

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

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 licence holder is entitled to a fair hearing; Article 6 of the European Convention on 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 & Diversity – There are no specific equality and diversity implications arising from the recommendations of this Report.

Safeguarding – 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 for the Arcade Mini-Market, 2 Sandbeck Arcade, Drummond Road, Skegness, PE25 3DY.
APPENDIX B	Internal Plan of the Arcade Mini-Market, 2 Sandbeck Arcade, Drummond Road, Skegness, PE25 3DY.
APPENDIX C	Premises Review Application submitted by Lincolnshire Police in respect of Arcade Mini-Market, 2 Sandbeck Arcade, Drummond Road, Skegness, PE25 3DY.
APPENDIX D	Extract from the premises licence for Arcade Mini-Market, 2 Sandbeck Arcade, Drummond Road, Skegness, PE25 3DY.
APPENDIX E	Extracts from the Local Licensing Policy Statement.
APPENDIX F	Extracts from the Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003.

APPENDIX G	Decision Notice from Licensing Sub-Committee held on 23 January 2017.
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<p>BACKGROUND PAPERS</p> <p>The following background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.</p> <p>Guidance issued by the Home Office to Licensing Authorities under Section 182 of the Licensing Act 2003:</p> <p>https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003</p> <p>The Council’s Statement of Licensing Policy adopted under the Licensing Act 2003:</p> <p>https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment</p> <p>Home Office Guidance Document: Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675533/A_Licensing_Authority_guide_to_right_to_work_checks_-_England_and_Wales.pdf</p>

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.