

Review of a Premises Licence in respect of Moredon Off Licence, 275 Whitworth Road, Swindon, SN25 3BU

Licensing Panel

Date: March 2017

Author: Kathryn Ashton – Licensing Manager

Wards: Rodbourne Cheney

Locality Affected: North Central

Parishes Affected: None

1. Purpose and Reasons

- 1.1 To consider the application for a review of a premises licence received from the Wiltshire Police in respect of Moredon Off Licence, 275 Whitworth Road, Swindon, SN25 3BU

2. Recommendations

It is recommended that the Panel:

- 2.1 Considers the application made by the Wiltshire Police together with any supporting evidence, and determines the application for the review of the premises licence. The options available to the Panel are:
- To modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition;
 - To exclude a licensable activity from the scope of the licence;
 - 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

3.0 Detail

- 3.1 An application for the review of a premises licence in respect of Moredon Off Licence, 275 Whitworth Road, Swindon, SN25 3BU has been received from Wiltshire Police who consider that the licensing objective in respect of crime and disorder is being undermined by current licensable activities at the premises. A copy of the review application is attached as **Appendix A**.

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- 3.2 Representations in respect of the review application have been received from residents, viz. Rodbourne Cheney Residents Association and Whitworth Road Residents Association which are attached as **Appendix B**
- 3.2 Moredon Off Licence is a licensed premises, operating under a premises licence (ref: 881160765LAPRE), attached as **Appendix C**. The licence was issued on 4th October 2016, following a licensing hearing, and authorises the sale of alcohol Monday to Saturday from 08.00hrs to 23:00hrs and Sunday from 08.00hrs to 22.30hrs. The Designated Premises Supervisor specified on the licence is Ms Gonul Howell.
- 3.3 The grounds for the review are stated in the Police's application as follows:
- 3.3.1 On 20th December 2016 at 19:00hrs, Wiltshire Police officers conducted a routine visit at the premises. A male identified as Alahattin ARIK was working at the premises – he spoke little English and was unable to answer any questions with regards to the premises. Whilst he phoned the manager police officers observed that Part B of the premises licence was not on display and there were no Challenge 25 posters visible.
- A short time later a male identified as Ali SARI arrived who stated he was the manager and produced the premises licence that showed the Premises Licence Holder and Designated Premises Supervisor to be Gonul Howell. Ms Howell was not present and Mr Sari made no attempt to contact her.
- Mr Sari was found to be under the influence of Cannabis and was arrested for driving whilst unfit and also for the possession of Cannabis a Class B drug.
- 3.3.2 On 31st December 2016 at 21:50 hrs PC Diffin attended the location to conduct a full licensing check. When entering the premises 2 members of staff were seen to sell alcohol. Both stated they were not being paid and only helping out. They had no knowledge that Ms Howell was the Premises Licence Holder or the Designated Premises Supervisor and had never spoken with or seen her or have any means of contacting her. They confirmed that they had not received any formal training from Ms Howell with regards the sale of alcohol.
- Ms Howell was contacted by phone and PC Diffin observed that Part B of the premises licence was not on display. It was produced with Part A from an envelope held under the counter

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- 3.3.3 Whilst at the premises on 31st December 2016, PC Diffin also noted that a number of licensing conditions were being breached, namely conditions 5, 6 and 7. For clarification;

When Ms Howell arrived at 22;20hrs she was cautioned and was unable to produce any staff training records in breach of condition 5 that states:

'No member of staff shall be permitted to sell alcohol until they have completed training upon induction that covers the supply of alcohol to persons who are intoxicated, drug awareness and the operation of the 'Challenge 25' policy. Staff shall receive refresher training on these subjects at no greater than six month intervals. Records of this training shall be kept on the premises and shall be made available to officers of any of the responsible authorities upon request. The records can be retained as electronic or written form'.

Ms Howell was unable to produce a Challenge 25 policy and training records. Condition 6 on the premises licence states:

'A Challenge 25 policy will apply to the premises and all staff serving alcohol shall be trained in the operation of the scheme so that anyone attempting to buy alcohol who appears to be aged 25 or under will be asked for identification of age in the form of either a valid passport, photo driving licence, government issued identity card or PASS accredited card or its equivalent successor card and if none is supplied or that supplied is unacceptable a sale will be refused and a record kept of the refusal. Staff selling alcohol will be subject to refresher training every 3 months and records of training shall be kept. Records of refusals and training shall be made available to enforcement officers on request.'

Mr Arik and Ms Gates were unable to work the CCTV stating that only Mr Sari could work it. Ms Howell was also unable to work the CCTV. Condition 7 states

'CCTV equipment which is fit for purpose and which covers all trading areas, smoking areas and entrance areas shall be provided and maintained in working condition when the premises are open for business. The CCTV product will be maintained for a minimum of 28 days and shall be provided to enforcement bodies on request. There must be a person on the premises able to download CCTV at all times the premises is open for trading.

- 3.3.4 Ms Howell stated that Mr Keskin owned the shop and that he and Mr Sari were using her licence. She had nothing to do with the running of the shop

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and that she had applied for the licence for Mr Sari and Mr Keskin. She took no part in the day to day running of the premises as the Designated Premises Supervisor

3.4 The Panel is requested to consider the application for the review of the premises licence from the Wiltshire Police and supporting evidence, having regard to Swindon Borough Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.

3.5 Wiltshire Police have included in their submission that should the Panel not revoke the Premises Licence then the following be considered:

- Ms Howell be removed as the Designated Premises Supervisor;
- A condition attached which specifies that the Designated Premises Supervisor or a nominated personal licence holder shall be present at all time when the Premises is trading authorising licensable activities;
- A condition be attached which specifies that a register be maintained in the form of a book with consecutively numbered pages, setting out the full name of any person who is employed or carrying out any unpaid work as part of the business. This shall show who is working that day and the times when they are present. The register shall be made available for inspection by authorised officers at any reasonable time.

4. Alternative Options

4.1 It would be possible to defer the determination of the review application to a date within five working days of the day (or the last day) on which the hearing was held, or to defer the hearing itself to a specified date (or dates) where it is considered to be necessary for the authority's consideration of any representation or notice made by a party. However, either step should be seen as an exceptional measure.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

5.1 There are no direct financial implications arising from the report. Failure to reach a reasonable conclusion, based on the facts, could lead to crime and disorder, or to unwarranted damage to the business in question. Either scenario could raise issues of compensation. In the case of an appeal, the Council could become liable for costs.

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Legal and Human Rights Implications

- 5.2 A declaration has been made by the Secretary of State that the Licensing Act is compliant with the Human Rights Act. None of the relevant Articles of the Human Rights Act has absolute sway over the others. Article 8 deals with a right to undisturbed home life; Article 10 gives the right to free expression, including the right to entertain; Article 1 of the Protocol says that licences are 'possessions', which the holder has a right to enjoy. Common sense has to be used, in balancing each of these against the other.

5.3 All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

This report relates to the requirements of licensing legislation.

5.4 Diversity Impact Assessment

It is not considered that the preparation of a DIA is required in respect of this report.

5.5 **Consultees**

The Director of Law and Democratic Services (Monitoring Officer) is consulted in respect of all reports.

5.6 **Background Papers**

Licensing Act, 2003

Secretary of State revised Section 182 Guidance

Swindon Borough Council's Statement of Licensing Policy, (2016)

5.7 **Appendices**

Appendix A - Application from Wiltshire Police for the review of a Premises Licence, (dated 5th January 2017), incorporating the Witness Statement of PC Diffin, (dated 5th January 2017).

Appendix B – Representations to the licence review from three residents, Rodbourne Cheney Residents Association and Whitworth Road Residents Association

Appendix C – Copy of extant Premises Licence, in respect of 275 Whitworth Road, Swindon dated 4th October 2016

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Final Draft