

Licensing Sub Committee15th August 2017

Contains Confidential or Exempt Information	No
Report Title	Premises Licence Review hearing
Premises Details	GROVER SUPERSTORE 2 Canterbury Avenue Slough Berkshire SL2 1EQ Premises Licence Number PL5847
Author(s)	Rachael Rumney Senior Licensing Officer Enforcement and Regulatory Services
Purpose of Report	Regulatory / Review Hearing for Premises Licence

1. SUMMARY

- 1.1 On **21st June 2017**, Michael Sims, the Licensing Manager on behalf of the Licensing Authority (“the Applicant”), brought a Review of the Premises Licence for GROVER SUPERSTORE, 2 Canterbury Avenue, Slough, SL2 1EQ.

2. RECOMMENDATIONS

- 2.1 The Sub Committee are asked to determine the Review.
- 2.2 Where the Sub Committee considers action is appropriate the options available are:
- 2.2.1 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;
- 2.2.2 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);
- 2.2.3 remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- 2.2.4 suspend the licence for a period not exceeding three months;
- 2.2.5 revoke the licence.

3. PRINCIPLES FOR MAKING DECISIONS**Context**

- 3.1 As quasi-judicial body the Sub Committee is required to consider this matter on its merits and must act reasonably and rationally. The Sub Committee can

only take into account relevant factors and must ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of the relevant facts, or the likelihood or the unlikelihood of some future event, the occurrence of which would be relevant. The Sub Committee must give fair consideration to the contentions of all persons entitled to make representation to them.

- 3.2 The Sub Committee can only consider matters within the report.
- 3.3 Members should note that the Sub Committee is meeting on this occasion solely to perform the role of Licensing Authority. As such Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the Council's related policies and guidance.
- 3.4 Members will be aware of the Council's Code of Conduct which requires them to declare interests. The Code applies to members when considering licensing issues. In addition as a quasi-judicial body, Members are required to avoid both actual bias and the appearance of bias.

Human Rights & Equality Act Duties

- 3.5 In determining the case, the Sub Committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998 and section 149 Equality Act 2010. The legislation makes it unlawful for a public authority to act in a manner which is incompatible with the European Convention of Human Rights.
- 3.6 When determining the case and considering imposition of conditions the Sub Committee must be satisfied that any decision which interferes with the rights of the Applicant or of others, only does so insofar as it is necessary to protect the rights of others and that no alternative decision would be appropriate.
- 3.7 The Sub Committee is specifically referred to the following Convention rights:
 - 3.7.1 Article 6 (the right to a fair trial),
 - 3.7.2 Article 8 (the right to respect for private and family life)
 - 3.7.3 Article 1 of the First Protocol (the protection of property)

4. RELEVANT POLICY AND LEGISLATION CONSIDERATIONS

- 4.1 The procedure to be followed for the Review hearing is attached at **Appendix H**.
- 4.2 The amended guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 was published in April 2017, section 11 and the salient points that the Sub Committee must have regard to for Review Applications are detailed below:

11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems

associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.2 *At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.*

11.10 *Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.*

Powers of a licensing authority on the determination of a review

11.16 *The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.*

11.17 *The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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.*

11.18 *However, 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. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.*

11.19 *Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*

- 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;*
- 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);*
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- suspend the licence for a period not exceeding three months;*
- revoke the licence.*

11.20 *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 to address the causes of concern that instigated the review.*

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 *There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:*

- *for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- *for the sale and distribution of illegal firearms;*
- *for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- *for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*
- *for prostitution or the sale of unlawful pornography;*
- *by organised groups of paedophiles to groom children;*
- *as the base for the organisation of criminal activity, particularly by gangs;*
- *for the organisation of racist activity or the promotion of racist attacks;*
- *for employing a person who is disqualified from that work by reason of their immigration status in the UK;*
- *for unlawful gambling; and*
- *for the sale or storage of smuggled tobacco and alcohol.*

4.3 The Sub Committee should also consider and make use of the 'Yellow and Red Card' system as directed and recommended by The Department of Culture, Media and Sport (DCMS) and as approved by the Licensing Committee.

5. LICENCE SUMMARY

5.1 Grover Superstore holds a Premises Licence number **PL5847** granted by Slough Borough Council. The Premises Licence Holder is Mr Kuljeet Singh Grover. The named Designated Premises Supervisor (DPS) is Mrs Parmeet Kaur Grover, who holds a Personal Licence (number PA007443) issued by Slough Borough Council.

5.2 The DPS is responsible for the day to day management of the premises.

5.3 The Premises Licence authorises the carrying out of the Relevant Licensable Activities as follows:

J – Supply of alcohol for consumption OFF the premises only

5.4 The times the Licence authorises the Licensable Activities are:

Monday to Sunday - 08.00am to 11.00pm

A copy of the current Premises Licence and Mrs Grover's Personal Licence are attached at **Appendix A**.

6. REASON FOR REFERRAL: REVIEW APPLICATION

6.1 The Applicant asking for the Review is the Council's Licensing Manager on behalf of the Licensing Authority. Any responsible authority may apply for a review of a Premises Licence if it is concerned about licenced activities. Where a Licensing Authority does act as a responsible authority and applies for a review, there must be a separation of responsibilities to ensure

procedural fairness and eliminate conflicts of interest. The Council has complied with the guidance issued under section 182 of the Licensing Act 2003.

6.2 The Applicant points out that in light of the:

- (a) 3 separate seizures of illicit tobacco products in breach of the Tobacco Products (Manufacture, Presentation and Sale) Regulations 2002 (as amended) and the Consumer Protection Act 1987,
- (b) sale of alcohol to an underage person in breach of section 146 of the Licensing Act 2003,
- (c) breach of the mandatory Premises Licence condition on age verification,
- (d) breach of mandatory Premises Licence condition on a CCTV system operating to the satisfaction of the Thames Valley Police and the Licensing Authority

there are no additional conditions that could be imposed on the Premises Licence that would prevent further criminal activities taking place at the licensed premises.

The recommendation by the Applicant is that there is no other alternative than the licensed premises:

- 6.2.1 being issued with a "Red Card;" and
- 6.2.2 for the Premises Licence to be revoked.

The full Review Application and supporting evidence are contained at **Appendices B to G respectively.**

6.3 The Licensing Authority is satisfied that this application for Review meets the appropriate legislative requirements within the Licensing Act 2003 and is therefore a valid application to be considered by the Licensing Sub Committee

6.3 There are various grounds on which a Review Application may be triggered and these are as follows (but not limited to):

- 1 or more sales to minors of alcohol or any other age restricted product
- Reports of anti-social behaviour linked to the premises
- Evidence of proxy sales
- Sales of alcohol outside trading hours
- Other crime and disorder connected to the premises
- Sales of counterfeit or substitute goods
- Offences under the Licensing Act 2003 including breach of conditions

6.4 The grounds for the Review relate to the Licensing Objectives below;

1. The Prevention of Crime and Disorder,
2. Public Safety
3. The Protection of Children from Harm,

- 6.5 The grounds for the Review Application that are fully detailed in the Review Application are summarised as follows;
- 6.5.1 **On 9th September 2014** Trading Standards Officers attended Grover Superstore and seized illicit tobacco products, totalling 2010 x packs of cigarettes and 12 x 50g pouches of hand rolling tobacco.
- 6.5.2 All items seized bore no English Department of Health warnings and no statutory pictorial health warnings; as required by the Tobacco Products (Manufacture, Presentation and Sale) Regulations 2002 (as amended) and the Consumer Protection Act 1987.
- 6.5.3 **On 26th February 2015** Mr Kuljeet Singh Grover and his company Grover Store Limited were each issued with a Simple Caution for possession of the above items.
- 6.5.4 **On 24th September 2015** Trading Standards Officers again attended Grover Superstore and seized a quantity of pouches of chewing tobacco, Cutters Choice hand rolling tobacco, as well as out of date food products.
- 6.5.5 Possession of the above items constituted offences under the Tobacco Products (Manufacture, Presentation and Sale) Regulations 2002 (as amended) and the Consumer Protection Act 1987 (for tobacco issues) and the Food Safety and Hygiene (England) Regulations 2013 (for the out of date food).
- 6.5.6 **On 11th February 2016** Mr Kuljeet Singh Grover and his company Grover Store Limited were each issued with a further Simple Caution for possession of the above items.
- 6.5.7 **On 21st November 2015** Police Officers and Licensing Officers conducted an underage test purchase of operations using a 13year old female volunteer and 15 year old male volunteer.
- 6.5.8 The underage volunteers entered Grover Superstore and the 15 year old male volunteer was able to purchase a bottle of original Lambrini. The sale was made by Mr Kuljeet Singh Grover who did not ask either volunteer for any identification or clarify the age of the volunteers. This is a breach of mandatory conditions 4 and 13 of the Premises Licence which took effect from 1st October 2010.
- 6.5.9 **On 15th May 2017** Slough Borough Council Trading Standards Officers conducted an operation using a tobacco detection dog. The officers attended Grover Superstore with the tobacco detection dog, where again illicit tobacco products were seized.
- 6.5.10 On this occasion officers seized 3 x 50 gram pouches of Golden Virginia hand rolling tobacco, 5 x 50 gram pouches of Amber leaf hand rolling tobacco, 4 packs of 20 L&M cigarettes and one pack of 20 Marlborough Gold cigarettes, 7 packs of 20 Benson and Hedges cigarettes, 7 packs of 20 John Player Gold leaf cigarettes, 7 packs of Marlborough Gold cigarettes and one pack of 20 Pall Mall Blue cigarettes.

6.5.11 None of the tobacco products complied with the Tobacco and Related Products Regulations 2016.

6.5.12 The seizure of the above items is currently subject of legal proceedings

6.5.13 It was noted by Police Officers Cerrig James Shardlow in his statement of 2 December 2015 that during the visit to the licensed premises by Thames Valley Police and a member of the Licensing team to the licensed premise son 21 November 2015 that the CCTV system in the Licensed Premises was displaying an incorrect time which was out by over an hour. It is not satisfactory for the CCTV system to operate in this manner and a breach of mandatory Condition 1 of the Premises Licence.

7 BACKGROUND INFORMATION

7.1 The Premises have been subject to 3 seizures of illicit tobacco products and an underage sale. Despite legal action being taken against Mr Grover and his company criminal activities have continued. The Applicant, the Police and Trading Standards Officers continue to have concerns over the licensed premises and the persistent breach of the mandatory Premises Licence conditions by Mr Grover.

7.2 The Applicant has reviewed the current conditions on the Premises Licence and is of the opinion that due to the persistent nature of the illegal activities and on the basis that in the Applicant's view there are no other conditions or actions that can be imposed or taken on the Premises Licence which will prevent future illegal activities and that the licensed premises should be issued with a Red Card and the Premises Licence revoked.

8 REPRESENTATIONS RECEIVED

8.1 There has been no representations received to the Review Application, however, Trading Standards Officers and the Police Licensing Officer will be in attendance at the hearing.

APPENDICES

Appendix A - Copy of Premises Licence PL5847 [and Personal Licence of Mrs Grover]

Appendix B - Review Application made by Michael Sims - Licensing Manager

Appendix C - Supporting evidence - Statement from Dean Cooke - Senior Trading Standards Officer.

Appendix D - Supporting evidence – Statement from Peter Adshead – Senior Trading Standards Officer and photographs.

Appendix E - Supporting evidence – Statement from Debie Pearmain – Police Licensing Officer

Appendix F - Supporting evidence – Statement from PC 5050 Shardlow

Appendix G - Supporting Evidence – Statement from PC 0031 Adams

Appendix H - Procedure for a Review Hearing

Background papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 - (Revised June 2014)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy - December 2014
- DCMS Guidance – Red and Yellow Card System
- LACORS Guidance to Trading Standards as a Responsible Authority: Reviews