

Slough Borough Council

Report To: Licensing Sub-Committee

Date: Wednesday 16th November 2022

Subject: Review Application - Farnham Road Off
Licence, 240 Farnham Road, Slough.

Chief Officer: Richard West

Contact Officer: Russell Denney-Clarke

Ward(s): Farnham

Exempt: NO - Part 1

Appendices: Appendix A – Review application form (Exempt)
Appendix B – TVP licensed premises incident
report dated 07/12/18 (Exempt)
Appendix C - TVP licensed premises incident
report dated 01/11/21(Exempt)
Appendix D - TVP appointment letter dated
02/11/21
Appendix E - TVP licensed premises incident
report dated 19/11/21(Exempt)
Appendix F - TVP letter ref breaches of
conditions dated 19/11/21
Appendix G - TVP licensed premises incident
report dated 27/07/22 (Exempt)
Appendix H - TVP licensed premises incident
report dated 14/07/22 (Exempt)
Appendix I – Premises checklist dated 11/08/22
Appendix J – TVP licensed premises incident
report dated 06/09/22 (Exempt)
Appendix K – Witness Statement of Jamie
Charlton dated 09/09/22 (Exempt)
Appendix L – Witness Statement of Jacqueline
Barnes dated 27/09/22 (Exempt)
Appendix M – TVP appointment letter dated
08/09/22
Appendix N – TVP licensed premises incident
report dated 20/09/22 (Exempt)
Appendix O – Email from Debie Pearmain
informing premises licence holder of review
application dated 21/09/22
Appendix P – Premises Licence

(NB: Exempt appendices under paragraph 7 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) in that they contain information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime)

1. Summary and Recommendations

1.1 This report sets out Thames Valley Police's grounds to review the premise licence for Farnham Road Off Licence, 240 Farnham Road. The review application has been made in accordance with section 51 of the Licensing Act 2003.

Consultation:

1.2 As per section 51(3) of the Licensing Act 2003, the review application was subject to the following advertising:

- published on Slough Borough Council's website
- a public notice placed at the window of the premises in question
- responsible authorities and Ward Members notified of the Application

1.3 The closing date for review representations was 31 October 2022. No representations in favour of the review were received.

Recommendations:

Having had regard to the representations made by all parties, the Sub-Committee must consider appropriate action for the promotion of the licensing objectives.

Where the Sub-Committee considers action is appropriate the statutory options available are:

- (a) Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition).
- (b) Exclude a licensable activity from the scope of the licence.
- (c) Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management.
- (d) Suspend the licence for a period not exceeding three months.
- (e) Revoke the licence.

Reason: The Licensing Team cannot disregard or overturn a decision made by the Licensing Sub Committee.

2. Report

Introductory paragraph

2.1 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 consider relevant factors and must ignore irrelevant factors. The decision must be based on evidence, which logically shows 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.

2.2 The Sub-Committee can only consider matters within the report.

- 2.3 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.
- 2.4 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.

Options considered

- 2.5 Consideration has been given to how the decision sought will help the Council meet its vision and corporate priorities, however the nature of the review application is outside the scope of these priorities.

Background

- 2.6 On 3 October 2022, Thames Valley Police submitted a review application for Farnham Road Off Licence, 240 Farnham Road, PL4469. The review application is on the grounds that the following licensing objectives are not being met:
- The prevention of crime and disorder
 - Public safety
 - The protection of children from harm
- 2.6.1 The full review application is attached at appendix A and the application can be summarised as follows:
- 2.6.2 18 October 2018 – Failed test purchase when a member of staff sold alcohol to two 16-year-old female volunteers. Incident report attached at appendix B.
- 2.6.3 1 November 2021 – Alleged sexual assault of a 17-year-old female inside the premises. Police unable to obtain CCTV. Incident report attached at appendix C.
- 2.6.4 12 July 2021 – TVP received intelligence that Designated Premises Supervisor is knowingly selling alcohol to underage children, along with NOS (nitrate oxide) canisters and balloons. Information also received that the premises is employing illegal staff. Incident report attached at appendix G.
- 2.6.5 6 September 2022 – Joint Immigration, Trading Standards, Licensing and Thames Valley Police visit to premises. Upon entry to the premises, a male tried to leave at the rear of the premises but was stopped by Immigration and Police Officers. Statement of Immigration and Police Officer attached at appendix K & L.
- 2.6.6 6 September 2022 – Trading Standards seized cigarettes that had non-English packaging and unlabelled white pots containing shisha.
- 2.6.7 6 September 2022 – In addition, 2 large canisters of Fastgas (Nitrous Oxide) and 3 boxes of NOS canisters were found behind the counter. Small plastic bags were also found.

2.6.8 It has been confirmed by Immigration, that the male who was stopped from leaving the premises does not have the right to work in the UK. During his interview he stated that he had been employed by the premises owner. He stated that he did not show any documentation and that owner of the premises knew that he did not have the right to work in the UK.

2.6.9 20 September 2022 – Following the multi-agency operation on 6 September 2022, a meeting was held the Premises Licence Holder and Designated Premises Supervisor, Licensing and TVP. Meeting notes are attached appendix N.

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 There are no financial implications to the Council.

3.2 Legal implications

3.2.1 The Licensing Authority is required to hold a hearing to consider the review application and any relevant representations made. The hearing must be held in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

3.2.2 An application for review of a premises licence may be made pursuant to section 51 of the Licensing Act 2003.

3.2.3 The Licensing Panel is required to give appropriate weight to the review application, representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps (if any) that are appropriate to promote the four licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

3.2.4 Members should note that each objective is of equal importance.

3.2.5 Having considered those relevant matters, the Licensing Sub-Committee can take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives:

Under Paragraph 11.19 of the Revised Guidance under Section 182 of the Licensing Act 2003, the options available to the Licensing Sub-Committee in a review application are the following:

- (d) Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition).
- (e) Exclude a licensable activity from the scope of the licence.
- (f) Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management.

(g) Suspend the licence for a period not exceeding three months.

(h) Revoke the licence.

3.2.6 If the Panel takes a step mentioned in (a) or (b) above, it can specify that the modification or exclusion is to have effect for a period up to three months if it considers this to be appropriate.

3.2.7 It should be noted that:

- (a) clear reasons must be given for the decision; and
- (b) any additional or modified conditions should be practicable and enforceable.

3.2.8 The applicant for the review, the premises licence holder and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in schedule 5 to the Licensing Act 2003.

3.2.9 In addition to determining the application in accordance with the legislation, Members must have regard to the:

- (a) common law rules of natural justice (i.e. ensuring a fair and unbiased hearing etc.);
- (b) provisions of the Human Rights Act 1998;
- (c) considerations in section 17 of the Crime and Disorder Act 1998.

3.2.10 The Panel must also act appropriately with regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms implemented under the Human Rights Act 1998, particularly articles 6 (relating to the right to a fair trial); article 8 (protection of private and family life); and article 1 of the First Protocol (protection of property).

3.2.11 The Panel must also consider section 17 of the Crime and Disorder Act 1998 which states:

'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.'

3.2.12 The Sub-Committee must have regard to the amended Secretary of States guidance issued in April 2018 under Section 182 of the Licensing Act 2003 and in particular, Chapters 9 (Determining applications) and 10 (Conditions attached to Premises Licences). Particular regard should be had to paragraphs 9.31 – 9.41 (Hearings) and 9.42 – 9.44 (Determining actions that are appropriate for the promotion of the licensing objectives).

3.2.13 With regards to Relevant, Frivolous or Vexatious Representations the relevant sections of Section 182 Guidance state the following:

9.4 *A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from*

premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub- committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them

3.2.14 The Sub-Committee must also have regard to the Council's Statement of Licensing Policy 2014-2019.

3.3 Risk management implications

3.3.1 Consideration has given to risk management implications however the nature of the decision is outside the scope of these priorities.

3.4 Environmental implications

3.4.1 Consideration has given to environmental implications however the nature of the decision is outside the scope of these priorities.

3.5 Equality implications

3.5.1 The Sub-Committee should be aware of and consider 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.

3.5.2 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.

3.5.3 The Sub-Committee is specifically referred to the following Convention rights:

- (i) Article 6 (the right to a fair trial),
- (ii) Article 8 (the right to respect for private and family life)
- (iii) Article 1 of the First Protocol (the protection of property)

4. Background Papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 (April 2018)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy – January 2019-2024