

<b>LICENSING AND APPEALS SUB-COMMITTEE</b> <b>25th May 2011</b>
--

<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>
----------------------------------	------------------------

**LICENSING ACT 2003**

**APPLICATION BY KIRIT SHAH FOR THE GRANT OF A PREMISES LICENCE IN  
RESPECT OF COSTCUTTER, 10 IVEL COURT, LETCHWORTH GARDEN CITY,  
HERTFORDSHIRE, SG6 2NH.**

**REPORT OF THE SENIOR LICENSING AND ENFORCEMENT OFFICER**

**1. BACKGROUND**

- 1.1 No premises licence under the Licensing Act 2003 is currently in place for the premises.
- 1.2 The applicant is currently operating the premises as a convenience store.

**2. APPLICATION**

- 2.1 The application is for the grant of a premises licence under Section 17 of the Licensing Act 2003.
- 2.2 The licensable activities and hours applied for are as follows:

### **3. APPLICATION PROCESS**

- 3.1 On 31st March 2011, Kirit Shah made an application for the grant of a Premises Licence.
- 3.2 The Applicant served copies of this application to the Police Authority and the other Responsible Authorities
- 3.3 A public notice was displayed on the premises for a period of not less than twenty-eight (28) days in accordance with the requirements of the Licensing Act 2003.
- 3.4 A newspaper advertisement was placed in The Advertiser newspaper dated 6<sup>th</sup> April 2011 in accordance with the Act.

### **4. REPRESENTATIONS**

- 4.1 No representation was received from Hertfordshire Constabulary.
- 4.2 No representations were received from any other Responsible Authority.
- 4.3 Sixteen representations were received from Interested Parties.
- 4.4 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the Licensing Officer to determine whether a representation is relevant as specified by the Act.
- 4.5 Three representations were deemed to be 'not relevant' by the Senior Licensing Officer as they did not relate to the effect or likely effect of the application on the four licensing objectives as prescribed by the Licensing Act 2003. A further representation was deemed 'not relevant' as it contained no home address details of the interested party, therefore, the Senior Licensing Officer was unable to determine whether or not the interested party lived within the vicinity of the premises. These four representations have not been included with this report.
- 4.6 In addition, one of the representations deemed to be 'not relevant' included a two hundred and forty seven (247) signature petition. In order for the petition to be accepted as relevant, it needs to meet the following requirements:
  - (i) the wording of the petition (commonly referred to as 'the prayer') needs to relate to the effect or likely effect of the application on the four licensing objectives;
  - (ii) 'the prayer' needs to be written on each page of the petition so that it is clear the signatories were aware of what they were signing; and
  - (iii) the signatories need to meet the requirements of an interested party in each individual case.

As requirements (i) and (ii) were not met, the Senior Licensing Officer has deemed the petition to be 'not relevant' and it has not been included with this report.

- 4.7 In respect of the 'relevant representations', section 4.4 of this report still applies to the specific content of each individual representation. Where representations include paragraphs that are not relevant to the Licensing Act 2003, these paragraphs have been clearly marked as 'not relevant' by the Senior Licensing Officer and should not be considered as part of the determination process. Interested parties must not refer to these paragraphs in any oral presentation at the hearing.
- 4.8 The twelve relevant representations are as follows:

- 4.9 The Applicant has been served with a copy of the representations.
- 4.10 The Applicant and the 'relevant' Interested Parties have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the Committee Hearing procedure.

## **5. OBSERVATIONS**

- 5.1 In determining this application, the Sub-Committee must have regard to the representations and take such steps, as it considers necessary for the promotion of the Licensing Objectives.
- 5.2 In making its decision, the Licensing and Appeals Sub-Committee must act with a view to promoting the Licensing Objectives. It must also have regard to the Licensing Authority's Statement of Licensing Policy and National Guidance.
- 5.3 The Licensing and Appeals Sub-Committee has the following options when issuing the Decision Notice:
- i) Grant the Application as made
  - ii) Grant the Application with conditions. Conditions should only be added where they are necessary to promote the Licensing Objectives.
  - iii) Refuse the Application.

## **6. LICENSING POLICY CONSIDERATIONS**

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2011 may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate.

### *5.1*

*Each licence application will be decided by reference to this Policy, the National Guidance issued by the Secretary of State, relevant legislation and to the individual circumstances of the particular application. The Council may depart from the Policy where the individual circumstances of any application merit such a decision in the interests of the promotion of the Licensing Objectives. Full reasons will be given for decisions taken by the Council when undertaking its licensing functions.*

### *5.4*

*In addressing these matters the Council will primarily focus on the direct impact of the activities taking place on, or in the immediate vicinity of, the licensed premises on members of the public living or working within the vicinity. The Council are aware of the National Guidance in relation to assessing vicinity, in particular paragraph 8.6, however vicinity will be assessed on a case by case basis taking into account all relevant factors. As an example, a churchwarden or member of the Church Parochial Council would ordinarily be considered to be working in the vicinity, providing the church is deemed to be in the vicinity of the premises, however a churchgoer would not.*

## 5.6

*The Council acknowledges that the licensing process can only seek to control measures within the direct control of the licensee and 'in the vicinity' of the premises. The Council does not consider that the term 'vicinity' can be generically defined and will consider its definition relative to the specific circumstances of each application. Generally, to be considered to be 'in the vicinity' of a premises, an interested party will need to demonstrate a causal link between the problems or likely problems caused at the premises, or in the immediate vicinity of the premises, in relation to the Licensing Objectives. For example, an interested party may be able to hear music from the premises within their property or they may see patrons leaving the premises and causing a nuisance immediately outside the premises.*

## 5.7

*The Council recognises that the exercise of its licensing functions are only one of a number of means of securing the above Licensing Objectives. The exercise, by the Council, of its licensing functions should not be seen as a panacea for all problems within the community. The Guidance states at paragraph 1.26 :*

*Licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and therefore beyond the direct control of individual licensees or certificate holders. However, licensees and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, for example on the pavement, in a beer garden, or in a smoking shelter, where and to the extent that these matters are within their control.*

## 5.8

*Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in North Hertfordshire. The Council will continue to work in partnership with other people, organisations and other Council Departments, including the responsible authorities, towards the promotion of the Licensing Objectives.*

## 5.9

*The Council will carry out its licensing functions in the promotion of the Licensing Objectives and, in addition, will support the stated aims of the Act which are as follows:*

- (i) the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.*
- (ii) the introduction of better and more proportionate regulation to give businesses greater freedom and flexibility to meet their customers' expectations;*
- (iii) greater choice for consumers, including tourists, about where, when and how, they spend their leisure time;*
- (iv) the encouragement of more family friendly premises where younger children can be free to go with the family;*
- (v) the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns; and*

- (vi) *the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.*

#### *5.10*

*In seeking to promote the above stated aims, the Council will support local and national schemes designed at raising and/or maintaining high standards in licensed premises such as 'Challenge 21', 'Challenge 25', Pubwatch and 'Safer Pubs and Clubs'. The Council will work with the licence holders to achieve these goals offering advice and support either through trade forums or trade newsletters.*

#### *6.3*

*Generally, when the Council's discretion is engaged, the presumption will be to grant the hours requested unless there are representations raised by responsible authorities and/or interested parties that demonstrate an adverse effect or likely effect on the Licensing Objectives.*

#### *6.4*

*The Council also recognises that licensing hours should not inhibit the development of a thriving and safe evening and night time economy, which is important for local investment, employment and tourism. The Council will not seek to restrict the trading hours of any particular premises unless this is necessary to promote one or more of the Licensing Objectives.*

#### *6.6*

*With regards to shops, stores and supermarkets that provide sales of alcohol for consumption off the premises, the Council would normally expect to grant the sale of alcohol at any time the premises is open to the public, unless representations give good reason to restrict the hours in relation to the Licensing Objectives.*

#### *10.1*

*The Council recognises the diversity of premises that will be licensed under the Act. The premises will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-away shops, community halls and schools. The Council will not ordinarily seek to limit the access by children to any premises unless it is considered necessary for the prevention of physical, moral or psychological harm to them.*

#### *10.3*

*Premises where concern for the protection of children may arise, include:*

- (i) where entertainment of an adult or sexual nature are commonly provided;*
- (ii) where there is a strong element of gambling on the premises;*
- (iii) where there is a known association with drug taking or dealing;*
- (iv) where current staff members have been convicted for serving alcohol to minors;*
- (v) where there is evidence of underage drinking; or*
- (vi) where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.*

#### 10.4

*There are a range of alternatives which the Council may consider for limiting the access of children, which include:*

- (i) a limit on the hours when children may be present;*
- (ii) a limitation or exclusion when certain activities are taking place;*
- (iii) the requirement to be accompanied by an adult;*
- (iv) limited access to parts of the premises; and*
- (v) full exclusion of those people under 18 from the premises when any licensable activities are taking place.*

#### 10.8

*The Council supports voluntary Codes of Practice such as "Challenge 21", "Challenge 25" or "PASS" (or other similar) accredited systems as relevant at any given time. The Council will particularly promote the use of the Validate photographic identification card promoted by Hertfordshire County Council. Alcohol should be packaged and promoted in a socially responsible manner so as not to encourage drinking amongst those who are under 18 years old. A copy of these Codes can be found at [www.beerandpub.com](http://www.beerandpub.com).*

#### 11.1

*'Cumulative Impact' means the potential impact on the promotion of the Licensing Objectives of a significant number of licensed premises concentrated in one area. An example of this impact would be the increase in crime and disorder or public nuisance in a town centre resulting from a large concentration of licensed premises in one area over and above the impact of the individual premises themselves.*

#### 11.3

*The Council recognises that there is a difference between the commercial need and the Cumulative Impact of premises in an area. Commercial need is the commercial demand for another licensed premises and is a matter for planning consideration and market forces. It does not form part of this Licensing Policy Statement.*

#### 11.5

*In considering issues of Cumulative Impact the Council will be mindful that, in addition to the licensing functions, there are a number of other mechanisms, both within and outside the licensing regime, for addressing nuisance and disorder. These include:*

- (i) planning controls;*
- (ii) positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;*
- (iii) the provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;*
- (iv) powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;*
- (v) police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;*
- (vi) the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;*

- (vii) *the confiscation of alcohol from adults in designated areas;*
- (viii) *the confiscation of alcohol from children;*
- (ix) *police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance;*
- (x) *the power of the Police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question; and*
- (xi) *other local initiatives that similarly address these problems.*

#### 12.2

*Conditions will only be imposed when they are necessary for the promotion of the Licensing Objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities. Conditions are likely to be focused towards the direct impact of those activities on persons living, working or otherwise engaged in activities in the vicinity.*

## 7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE

- 7.1 The following paragraphs from the Guidance issued by the Home Office under section 182 of the Licensing Act 2003 (October 2010) may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Guidance where they deem it appropriate.

#### 1.16

*The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.*

#### 2.4

*The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.*

#### 2.6

*Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans*



to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

### 2.38

*In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.*

### 2.39

*Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.*

### 2.47

*Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include:*

- *where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made, to ensure that sales are not made to individuals under 18 years (whether the age limit is 18 or 16 as in the case of the consumption of beer, wine and cider in the company of adults during a table meal);*
- *restrictions on the hours when children may be present;*
- *restrictions on the presence of children under certain ages when particular specified activities are taking place;*
- *restrictions on the parts of the premises to which children may have access;*
- *age restrictions (below 18);*
- *restrictions or exclusions when certain activities are taking place;*
- *requirements for accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and*
- *full exclusion of people under 18 from the premises when any licensable activities are taking place*

## **8. LICENSING OFFICER COMMENTS**

8.1 In determining whether or not a representation is relevant, the Licensing Officer has to consider whether or not the concerns raised relate to the four licensing objectives of:

- (i) the prevention of crime and disorder;
- (ii) public safety;
- (iii) the prevention of public nuisance; and
- (iv) the protection of children from harm

- 8.2 Two particular concerns that were contained in the majority of representations related to:
- (i) the need for another licensed premises in the area; and
  - (ii) the moral issue of a pharmacy also selling alcohol
- 8.3 Demand is not a relevant issue in relation to an application as it clearly does not fall within the remit of any of the four licensing objectives.
- 8.4 The issue of whether or not a pharmacy should be selling alcohol and the associated arguments on this point are issues of public health which does not fall within the remit of any of the four licensing objectives.

## **9. CONTACT OFFICERS**

- 9.1 Steve Cobb  
Senior Licensing and Enforcement Officer  
01462 474833.