

LICENSING SUB-COMMITTEE
21 January 2022

PUBLIC DOCUMENT

AGENDA ITEM No.

LICENSING ACT 2003

**APPLICATION BY GREENE KING RETAILING LIMITED
TO VARY THE DESIGNATED PREMISES SUPERVISOR IN RESPECT OF
THE ENGINE, 3 STATION ROAD, BALDOCK, HERTFORDSHIRE, SG7 5BS**

REPORT OF THE LICENSING MANAGER

1. BACKGROUND

- 1.1 Greene King Retailing Limited has held a premises licence under the Licensing Act 2003 since 30 August 2005. The premises licence was granted as a result of a 'convert and vary' application during the transitional period from the previous Licensing Act 1964.
- 1.2 During that time, the premises has had ten (10) different designated premises supervisors. Dale Mabert was previously the designated premises supervisor between 12 November 2019 and 13 October 2021.

2. APPLICATION

- 2.1 The application is to vary the premises licence to specify a new designated premises supervisor under section 37 of the Licensing Act 2003.
- 2.2 In accordance with section 38 of the Licensing Act 2003, the application took immediate effect during the application period.
- 2.3 The application period is the period commencing when the licensing authority received the application and ending when the application is granted, refused, or withdrawn.

3. APPLICATION PROCESS

- 3.1 On 7 December 2021, Greene King Retailing Limited made an application to North Hertfordshire District Council to vary the designated premises supervisor to Dale Mabert.
- 3.2 The application took immediate effect until such time as the application is formally determined.
- 3.3 The application was received electronically so copies were served by the licensing authority to Hertfordshire Constabulary who are the only statutory consultee.
- 3.4 Hertfordshire Constabulary had a period of fourteen (14) days in which to decide whether to give the licensing authority notice of an objection to the proposed designated

premises supervisor.

3.5 Section 37 (5) states:

“Where a chief officer of police..... is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.”

4. REPRESENTATIONS

4.1 A representation was received from Hertfordshire Constabulary setting out the reasons why the granting of the application would undermine the objective of ‘the prevention of crime and disorder’.

4.2 The representation is attached as **Appendix A**.

4.3 The full representation has been provided to the sub-committee and the premises licence holder however part of the representation has been redacted from the public documentation.

4.4 The redacted section relates to an ongoing police investigation and should be discussed in closed session by the sub-committee. During the closed session, CCTV footage relating to the allegation will be available for viewing by the sub-committee and premises licence holder.

4.5 At the conclusion of the closed session, the remaining part of the representation can be discussed in open session as the convictions are in the public domain having been heard in open court.

5. OBSERVATIONS

5.1 In determining this application, the sub-committee must have regard to the representation and take such steps as it considers appropriate for the promotion of the licensing objective of ‘the prevention of crime and disorder’.

5.2 In making its decision, the sub-committee must have regard to the licensing authority’s Statement of Licensing Policy and National Guidance.

5.3 The sub-committee has the following options when issuing the Decision Notice:

- i) Grant the application to specify Dale Mabert as designated premises supervisor
- ii) Refuse the application to specify Dale Mabert as designated premises supervisor

5.4 There is no power to amend the licensable activities, timings, or licence conditions.

6. LICENSING POLICY CONSIDERATIONS

6.1 The following paragraphs from the Council’s Statement of Licensing Policy 2021 – 2026 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:

D1.4

When determining applications the Council will have regard to this Statement of Licensing Policy, relevant legislation and any Guidance issued by the Home Office pursuant to section 182 of the Act. If relevant representations are made, the Licensing and Appeals Committee or its Sub-Committee, will balance its decision against all other factors for and against the application.

D2.1

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.

D2.9

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) protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- (ii) giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;*
- (iii) recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;*
- (iv) providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and*
- (v) encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.*

F2.1

There are many references throughout this policy to the term 'appropriate'. The Act states at section 18(3)(b) that when relevant representations are received the licensing sub-committee has to consider what steps "it considers appropriate for the promotion of the licensing objectives".

F2.2

There is no current legal definition of the term appropriate, however the Guidance states:

9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit

in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

F2.3

The Council anticipates that, in due course, case law will provide clarity on the meaning of 'appropriate'. Until such time that the courts make a judgement the Council will give 'appropriate' its ordinary meaning as expanded on by paragraphs 9.39 and 9.40 of the Guidance, subject to the over-arching requirement that determinations should be reasonable and proportionate.

F2.4

Case law has defined 'proportionate' as generally requiring a four-step test, namely:

- there must be a legitimate aim for a measure;*
- the measure must be suitable to achieve the aim;*
- the measure must be necessary to achieve the aim (that there cannot be any less onerous way of achieving it); and*
- the measure must be reasonable, considering competing interests.*

The Council is aware that their determinations must be proportionate to the evidence received in respect of an application and will have regard to this definition.

O1.1

The Council accepts that it can only consider matters in relation to the four licensing objectives when determining licensing applications, however as a public body it also has a statutory duty to consider the following legislative requirements:

- (i) Crime and Disorder Act 1998
Local authorities are required to have due regard to the crime and disorder implications of any decision it makes.*
- (ii) Human Rights Act 1998
Local authorities are required to implement the Act in a manner consistent with the Human Rights Act 1998 by giving due consideration to the European Convention on Human Rights and Fundamental Freedoms.*
- (iii) Equality Act 2010
Local authorities are required to implement the Act in a manner consistent with its responsibilities to consider the equality implications of any decision it makes.*

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 (April 2018 version) 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 and the determination should be based upon consideration of the full document:

1.3

The licensing objectives are:

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

1.4

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

1.5

However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

- *protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- *giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;*
- *recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;*
- *providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and*
- *encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.*

2.1

Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

4.31

Every premises licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to remove the usual mandatory conditions set out in the 2003 Act. Guidance on such applications is set out in paragraphs 4.52 to 4.65 of this Guidance.

4.32

The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly. For this reason, the name of the DPS and contact details must be specified on the premises licence and this must be held at the premises and displayed in summary form. The DPS' personal address should not be included in the summary form in order to protect their privacy.

4.39

The police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a DPS is first specified in relation to particular premises and the specification of that DPS in relation to the particular

premises gives rise to exceptional concerns. For example, where a personal licence holder has been allowed by the courts to retain their licence despite convictions for selling alcohol to children (a relevant offence) and then transfers into premises known for underage drinking.

4.40

Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put forward their arguments. The 2003 Act provides that the applicant may apply for the individual to take up post as DPS immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.

4.41

The portability of personal licences between premises is an important concept under the 2003 Act. It is expected that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on grounds which are not exceptional, they should raise the matter with the chief officer of police as a matter of urgency.

4.45

The Policing and Crime Act 2017 gives licensing authorities the power to revoke or suspend personal licences, with effect from 6 April 2017. This is a discretionary power; licensing authorities are not obliged to give consideration to all personal licence holders subject to convictions for relevant offences, foreign offences or civil penalties for immigration matters. When a licensing authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months. This applies to convictions received and civil immigration penalties which a person has been required to pay at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017, or the requirement to pay the civil penalty arose after 6 April 2017. Only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017. The process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out at section 132A of the 2003 Act. The decision to revoke or suspend a personal licence must be made by the licensing committee or sub-committee, but the actions required before making a final decision may be made by a licensing officer.

9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

8. LICENSING MANAGER COMMENTS

- 8.1 The comments within this section of the report are provided by the licensing manager to assist the sub-committee with the interpretation of the Act, the Guidance and existing case law. It is for the sub-committee to determine what weight they attach to this advice.

Closed session and redacted representation

- 8.2 The reason for hearing the allegations relating to the ongoing investigation in closed session is so not to prejudice the investigation or the outcome of any subsequent charges (if deemed appropriate).

- 8.3 In making this decision, officers considered the public interest test of the 'need' for this information to be in the public domain against the rights of the designated premises supervisor when the investigation is ongoing
- 8.4 The licensing authority discussed this decision with Hertfordshire Constabulary who support the approach taken.
- 8.5 Additionally, a licensing authority may decide to revoke a personal licence in light of convictions arising during the licence duration. Whilst no decision has yet been taken in this respect, it is important that any subsequent sub-committee hearing is not prejudiced by the discussion at this hearing.

Exceptional circumstances

- 8.6 Section 37 (5) of the Licensing Act 2003 states:

"Where a chief officer of police is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied."

- 8.7 Paragraph 4.41 of the Statutory Guidance states:

"The portability of personal licences between premises is an important concept under the 2003 Act. It is expected that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on grounds which are not exceptional, they should raise the matter with the chief officer of police as a matter of urgency"

- 8.8 The Licensing Act 2003 has been in effect since 24 November 2005 and this is only the second time the licensing authority has received an objection to an incoming designated premises supervisor. Officers are satisfied that the police are not routinely objecting and consider each application on its own merits, reserving objections to exceptional circumstances.

Review of a premises licence

- 8.9 At any time, a responsible authority or other person may apply to the licensing authority for the review of a premises licence if they can demonstrate that the premises are not adequately promoting the licensing objectives.
- 8.10 A licensing sub-committee would hold a hearing to assess the representation(s) and the oral submissions of the licence holder before considering what, if any, action was appropriate. The options available to the sub-committee would be:
- i) to take no action;
 - ii) to modify the conditions of the premises licence (modify includes adding new conditions, altering or omitting existing conditions, or altering permitted timings of licensable activities);
 - iii) to exclude a licensable activity from the premises licence;

- iv) to remove the designated premises supervisor from the premises licence;
- v) to suspend the premises licence for a period not exceeding three months; or
- vi) to revoke the premises licence.

9. APPENDICES

9.1 Appendix A Representation from Hertfordshire Constabulary

10. CONTACT OFFICER

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