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Friday, 29 January 2016

To: The Members of the **Licensing Committee**
(Councillors: Bill Chapman (Chairman), Ian Sams (Vice Chairman), Nick Chambers, Mrs Vivienne Chapman, Surinder Gandhum, Ruth Hutchinson, Paul Ilnicki, Rebecca Jennings-Evans, Oliver Lewis, Jonathan Lytle, Bruce Mansell, Nic Price, Conrad Sturt, Pat Tedder and Valerie White)

In accordance with the Substitute Protocol at Part 4 of the Constitution, Members who are unable to attend this meeting should give their apologies and arrange for one of the appointed substitutes, as listed below, to attend. Members should also inform their group leader of the arrangements made.

Substitutes: Councillors Rodney Bates, Ian Cullen, David Lewis, Max Nelson, Wynne Price and Victoria Wheeler

Dear Councillor,

A meeting of the **Licensing Committee** will be held at Council Chamber, Surrey Heath House on **Monday, 8 February 2016 at 7.00 pm**. The agenda will be set out as below.

Please note that this meeting will be recorded.

Yours sincerely

Karen Whelan

Chief Executive

AGENDA

Pages

Part 1 (Public)

1 Apologies for Absence

2 Minutes

3 - 4

To confirm and sign the minutes of the meeting held on 14 January 2016.

3 Declarations of Interest

Members are invited to declare any Disclosable Pecuniary Interests and

non-pecuniary interests they may have with respect to matters which are to be considered at this meeting. Members who consider they may have an interest are invited to consult the Monitoring Officer or the Democratic Services Officer prior to the meeting.

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|----------|--|----------------|
| 4 | Statement of Licensing Policy 2016 - 2021 | 5 - 38 |
| 5 | Licensing Sub Committee Minutes | 39 - 54 |

To receive and sign the minutes of the Licensing Sub Committee meetings which have taken place since the last meeting of the Committee:

- Everest Cash and Carry, 449 London Road, Camberley – 5 January 2016
- JK Wines & Foods, 5 High Street, Bagshot – 5 January 2016

**Minutes of a Meeting of the Licensing
Committee held at Council Chamber,
Surrey Heath House on 14 January
2016**

+ Cllr Bill Chapman (Chairman)
+ Cllr Ian Sams (Vice Chairman)

+ Cllr Nick Chambers	+ Cllr Jonathan Lytle
+ Cllr Mrs Vivienne Chapman	+ Cllr Bruce Mansell
- Cllr Surinder Gandhum	+ Cllr Nic Price
+ Cllr Ruth Hutchinson	- Cllr Conrad Sturt
+ Cllr Paul Ilnicki	+ Cllr Pat Tedder
- Cllr Rebecca Jennings-Evans	+ Cllr Valerie White
- Cllr Oliver Lewis	

+ Present

- Apologies for absence presented

Substitutes: Cllr David Lewis (In place of Cllr Oliver Lewis)

In Attendance: Tim Pashen, Derek Seekings, Lee Brewin and Paula Barnshaw

14/L Minutes

The minutes of the meeting held on 4 November 2015 were confirmed and signed by the Chairman.

15/L Statement of Licensing Policy

The Committee received a report on the review of the Statement of Licensing Policy for 2016 -2021.

It was noted that the time between the close of the consultation to the Licensing Committee meeting had not been long enough to complete the review of the policy. It was proposed that an additional meeting be arranged for the 8 February to finalise this. The policy would then be submitted to Council for adoption.

Members were advised that the statement used to be reviewed every three years but legislation had changed this to five years. However, it was proposed that there could be an interim review of the statement.

The Committee was advised that 2200 consultation letters had been sent out and there had been 18 responses which were noted. Members discussed the response from Surrey Police and the Executive Head – Community agreed to ask Surrey Police for more data, particularly the times of any alcohol related offences.

Members were advised that in accordance with the change in legislation in 2011, cigarette vending machines had been banned from licensed premises. It was proposed that any paragraphs relating to tobacco vending machines be removed. (Paragraphs 36 and 46 refer). It was agreed to remove paragraph 37 also as it

included reference to cigarettes and it appeared confusing after Members agreed to remove paragraph 36.

Paragraph 70 seemed to be incomplete. Officers would check this and report back to Committee. The Committee discussed paragraph 72 and felt that each licensing application would be dealt with on its own merits and licensing hours sought were broadly comparable, therefore this paragraph was not appropriate. It was proposed that this paragraph also be removed.

It was noted that public health did not form part of the remit for the Licensing Authority; therefore paragraphs 7 and 8 would be rewritten following consultation with the Chairman and the legal officer. In addition paragraph 111 would be amended.

Paragraph 157 would be amended to include information regarding Public Space Protection Orders. The Committee was advised that members as well as residents could make concerns known to the Licensing Authority regarding any anti-social behaviour in public spaces.

A statement on how the Equality Act provisions would be addressed and would be included (no longer the Disability Discrimination Act in paragraph 28) in the statement. Officers had thought about provisions and would finalise accordingly.

Resolved that

- i) the amendments set out above be made to the Statement of Licensing Policy, and**
- ii) the Statement of Licensing Policy be brought back to the Licensing Committee on 8 February 2016 to agree the amendments and recommend to Council for adoption.**

Chairman

Statement of Licensing Policy 2016 – 2021

Portfolio:	Non-Executive Function
Ward(s) Affected:	All

Purpose

To consider the proposed Statement of Licensing Policy for 2016 - 2021

Background

1. A draft version of the Statement of Licensing Policy was considered by the Licensing Committee at its meeting on 14 January 2016, where further amendments were requested. The Statement has now been updated to incorporate any comments arising from this meeting.

Current Position

2. The revised draft Statement of Licensing Policy following on from the meeting of 14 January 2016 is attached at Annex A. This draft has been reviewed by the Council’s legal advisors. Following approval of the revised draft Statement of Licensing Policy by the Licensing Committee, the final version of the Statement of Licensing Policy incorporating amendments will be submitted to the next meeting of the Full Council on 24 February 2016.

Options

3. Any amendments to the existing Statement of Licensing Policy are made at the discretion of the Council but due weight will have to be given to any representations made as a result of the consultation process. There is no alternative but to undertake the review of the Statement of Licensing Policy as the Council would be unable to exercise its licensing function in relation to such policy in the absence of a valid Statement of Licensing Policy.

Recommendation

4. The Committee is invited to make comments on the proposed revisions to the Statement of Licensing Policy set out in Annex A for consideration by Full Council.

Background Papers: The 18 consultation responses published on the Council’s website.

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Head of Service: Tim Pashen – Executive Head of Community

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SURREY HEATH BOROUGH COUNCIL

LICENSING ACT 2003 SECTION 5

STATEMENT OF LICENSING POLICY

2016 - 2021

This licensing policy has been determined by the Council for the five year period commencing **DD/MM/2016** with a view to promoting the four licensing objectives set out in section 4(2) of the Licensing Act, 2003. These objectives are:

1. the prevention of crime and disorder;
2. public safety;
3. the prevention of public nuisance; and
4. the protection of children from harm.

The Council as licensing authority when determining applications that have been the subject of representations will only refuse the grant of a licence or impose conditions if this is necessary to achieve or promote the licensing objectives.

During the **five** year period the policy will be kept under review and the Council will if necessary, after appropriate consultations, make such revisions to it as may be considered appropriate. Any amendments will be incorporated in the licensing statement after each review. The statement of licensing policy will be reviewed and published with amendments, if any, at least once every **five** years.

GENERAL

1. Surrey Heath is located in the northwest corner of Surrey and is home to over **86,000** ~~80,000~~ people. Camberley Town Centre is the largest shopping and business area within the district and the largest cluster of entertainment venues is situated in this town area. The town area has been further developed to include increased shopping facilities, restaurants, a multiscreen cinema and a ten pin bowling complex. Much of the Borough remains undeveloped and parts are covered by the 'Green Belt'. Most areas are primarily residential in nature but there are large tracts of heathland and open green spaces. The agriculture and farming business element of the area is now virtually non-existent and areas formerly used for these purposes are now very often used in connection with open air recreational activities. Licensable activities as defined within the Licensing Act are very often complementary to these recreational activities.

The Camberley Town Centre Area Action Plan sets out guidelines for development over the next 20 years. The vision for the town centre is to offer a wide range of shops, excellent leisure facilities, high quality office premises, residential opportunities and a full range of community services for the local and wider community. The town centre's growing role as a leisure and cultural destination will be supported. Its main

characteristics include a key civic and cultural role, a growing night time economy and as a major employment centre.

2. There are numerous public houses, restaurants, clubs, community centres and halls in the Borough where alcohol is sold or entertainment is provided on a regular or occasional basis and there are retail outlets for the sale of alcohol. Under the terms of the Licensing Act, the retail sale of alcohol and the provision of regulated entertainment can only take place in suitable premises that have been licensed by the Council and the people operating and managing these premises must hold appropriate licences.
3. Surrey Heath Borough Council is the Licensing Authority pursuant to the Licensing Act, 2003 being responsible for considering all applications for licensable activities, as defined in section 1 of the Act, within the Borough and determining licence applications in accordance with the provisions of the Act. The purpose of licensing is to regulate licensable activities in licensed premises, by qualifying clubs and at temporary events.
4. The Council has had regard to guidance given by the *Home Office Secretary of State* under section 182 of the Act when formulating the policies set out in this document. Decisions taken on applications for licences will have regard both to the guidelines issued by the Secretary of State and the licensing policy as set out below.
5. In the interests of speed, efficiency and cost-effectiveness the Council has, where possible, delegated licensing decisions and functions to officers of the Council. No matters will be determined under delegated powers if the matter to be decided is controversial, nor if the interests of any person, body or organisation would be jeopardised in the absence of a hearing or the determination of the matter under delegated powers is precluded by law.
6. All references to “the Act” in this document shall be deemed to mean “The Licensing Act 2003”. The Licensing Committee and the Adjudication Sub-Committee may both consider licence applications on behalf of the Council and where reference is made to the Adjudication Sub-Committee undertaking a function that function may be undertaken by the Licensing Committee. All references to guidance are reference to the guidance issued under Section 182 of the Act and references to premises also apply to club premises.

Licensing Objectives

7. To achieve these objectives the *Licensing Authority authority* will use its full range of powers and engage all relevant responsibilities including its planning controls, transport controls, *public safety health and* crime and disorder policies and powers. The authority will enter appropriate partnership arrangements, working closely with the police, the fire authority, trading standards, local businesses, community representatives and local people in meeting these objectives. Neighbouring authorities and parish councils will be consulted where appropriate.
8. Applicants for new licences are strongly advised to liaise with the Surrey Police *Licensing Officer* in relation to adopting measures to avoid crime and disorder problems in the premises to be licensed. The Council will also have regard to its strategies in relation to crime and disorder, *and public safety, and public health* which are relevant to achieving the licensing objectives. *The Council will consider health*

related evidence that directly links to a premises when their discretion is engaged after representation where it is considered to impact on one or more of the licensing objectives. Health data may also be considered where it links to the context and surroundings of a premises where a representation is made on the grounds of cumulative impact, either within or outside a Cumulative Impact Policy area as allowed for in the Act.

PARTNERSHIP WORKING AND INTEGRATING STRATEGIES

9. The Home Office Guidance, [paragraph 13.56], recommends that Statements of Licensing Policies (SOLPs) should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night-time economy. While many local strategies are not directly related to the promotion of the licensing objectives, they indirectly impact upon them. Co-ordination and integration of such policies, strategies and initiatives is therefore imperative.

In conjunction with Surrey's Licensing Forum, the Council will endeavour to:

- a. Work with partner agencies that are involved either directly or indirectly in delivery of the SOLP, including responsible authorities, local businesses and the local community.
- b. Ensure interrelated strategies and agendas which support delivery of the SOLP are identified and integrated, such as the countywide Substance Misuse Strategy, Surrey's Anti Social Behaviour Strategy and borough and district Sustainable Communities Strategies.
- c. Identify and galvanise new and existing opportunities to develop, strengthen and foster partnership working in order to improve delivery of the SOLP.
- d. Undertake consultation and communication on licensing issues with all licensees, communities and their representatives.
- e. Ensure pro-active enforcement in line with the council's enforcement policy in order to achieve the licensing objectives.
- f. Work to reduce crime and disorder which exists in the close proximity to licensed premises.

PERSONAL LICENCES

General

10. In general a personal licence must be granted to any applicant aged 18 or over who possesses a licensing qualification or is a person of a prescribed description as determined by the Secretary of State for *the Home Office*. A licence shall not be granted if the applicant has forfeited a personal licence in the period of five years ending with the day the application was made. The police can oppose an application if the applicant has an unspent conviction for a relevant offence or a comparable foreign offence.

Policy

11. Applicants who meet the criteria set out in paragraphs (a), (b) and (c) of sub-section 120(2) of the Act will be granted a personal licence in accordance with statutory requirements. Applications from people who do not meet the criteria will be rejected.

12. If the applicant has been convicted of a relevant offence or a foreign offence and the offence is not spent under the terms of the Rehabilitation of Offenders Act 1974 (**as amended**) the Police will be given notification to that effect. If the Chief Officer of Police is satisfied that issuing or renewing the licence would undermine the crime prevention objective the Chief Officer of Police must within 14 days serve an objection notice on the Council. If such an objection is lodged the application will be considered at a hearing before a Licensing Sub-Committee in accordance with the Council's approved hearing procedure.
13. In order to substantiate whether an applicant has unspent convictions for a relevant offence, applicants will be required to submit with their application a criminal conviction certificate or a criminal record certificate or the results of a subject access search of the police national computer by the National Identification Service. Applicants from foreign jurisdictions will be required to provide a certificate of good conduct from the country in which they have been residing for that period of time not covered by any criminal record disclosure. If necessary the certificate shall be accompanied by an English translation. If the country in which the applicant has been residing is not one that supplies such certificates, the applicant shall swear a statutory declaration as to whether or not they have been convicted outside of England and Wales of a relevant offence or an equivalent offence. Applicants shall be warned that the making of any false statement for the purpose of obtaining a licence is a criminal offence for which they may be prosecuted.
14. A hearing to decide whether or not an application should be approved will only take place if the Chief Officer of Police serves an objection notice on the Council. All representations made at the Licensing Sub-Committee hearing which are relevant to the grant or refusal of a licence will be taken into consideration. This may include details of any mitigating circumstances, the nature of any offences committed and the period of time that has elapsed since the date of conviction for those offences.
15. It will be for the Sub-Committee to decide on the basis of representations made whether or not the rejection of the application is **appropriate necessary** for the promotion of the crime prevention objective. If the Sub-Committee decides that the rejection of the application is necessary for this reason it has no alternative but to reject the application. In all other cases the licence will be granted.

Reason

16. The Council has a statutory duty to process applications as set out above. For the purpose of exercising this duty it is necessary to ascertain whether applicants have relevant unspent convictions. The Council therefore feels that it is obliged to seek accurate and independent confirmation that applicants do not have such convictions. The Sub-Committee has the discretion to decide whether an objection notice makes it **appropriate necessary** to reject an application in order to promote the crime prevention objective and in order to do this will give consideration to all relevant representations presented to it at a hearing.

PREMISES LICENCES

General

17. A premises licence is required for any premises that are used for one or more licensable activity as defined in section 1 of the Act. Persons who may apply for

these licences are defined in section 16 of the Act. Applications for licences have to be accompanied by the appropriate fee, a plan of the premises and an operating schedule in a form prescribed by the Secretary of State for the Home Office or in statutory instruments. Fee details and prescribed forms for applications and plans may be viewed on the Home Office and the Council's websites or can be obtained from the Licensing Section of the Council.

18. Applicants will be required to advertise their applications in a prescribed form and in a manner that is likely to bring applications to the attention of the interested parties who are likely to be affected.

Risk Assessment - Policy

19. Some aspects of the operating schedule will therefore cover matters that would need to be addressed in a Risk Management Plan. Applicants for premises licences or for major variations of such licences are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications. This risk assessment will indicate any necessary steps to be set out in an operating schedule to promote the four licensing objectives.
20. Risk assessments need to be comprehensive and address all relevant issues relating to the four licensing objectives. The risk assessment does not have to be submitted to the licensing authority or responsible authorities as part of the application but it may be of assistance in the application process if a copy of the assessment is provided to relevant bodies.

Reasons

21. Risk assessment is an essential part of the application process that will assist applicants to develop the operating schedule that will form part of their application for a premises licence or club premises certificate. Although the risk assessment should not be submitted as part of the application it may assist the applicant to have copies available at any hearing which may be necessary to explain how the operating schedule will satisfy the licensing objectives. The need for a risk assessment to be undertaken by applicants is made clear in the official guidance from the Secretary of State.

Operating Schedules

Policy in Relation to all Premises Where Alcohol is Supplied

22. The following paragraphs are intended to give guidance to applicants on compiling operating schedules. It is not a requirement that all the matters that have been addressed should be included in an operating schedule. The Council as licensing authority will when considering any representations made in relation to operating schedules only have regard to whether all matters that are necessary to achieve or promote one or more of the licensing objectives have been included. If no representations are received the operating schedule will be accepted as written but representations may be avoided if relevant points as set out below are included.
23. Applicants will be expected to demonstrate in their operating schedule how they intend to be good neighbours to residents and to other business interests in the area. In addition applicants will be expected to propose practical measures to prevent disturbance to local residents and to indicate what action will be taken to prevent or reduce noise emanating from the premises.

24. The complexity and detail required in the operating schedule will depend upon the nature and use of the premises. For premises such as a public house where public entertainment is not provided only a relatively simple document will be required. For a major public entertainment venue it will be expected that issues such as public safety and crime and disorder will be addressed in detail. The Council will provide advice on the drafting of operating schedules.
25. The Licensing Act 2003 and the official guidance issued by *the Home Office* places a great onus on licence holders to identify and deal with the environmental and safety implications arising from the licensing of premises. This approach avoids the prescriptive application of rules and regulations and it is the intention that the promotion of the licensing objectives will be closely tailored to the requirements of particular premises and operations.
26. The operating schedule should not duplicate statutory requirements including those set out in the Licensing Act, 2003 (e.g. not serving alcohol to persons under eighteen years old, not serving alcohol to anyone who is already intoxicated, etc.). The safety of the public should be addressed in the operating schedule but statutory requirements set out in the following legislation should not be repeated:
- The Health and Safety at Work Act 1974
 - The Workplace (Health, Safety and Welfare) Regulations 1992
 - The Management of Health and Safety at Work Regulations 1999
 - The Lifting Operations and Lifting Equipment Regulations 1998 (applies to lifts)
 - The Provision and Use of Work Equipment Regulations 1998 1999
 - The Electricity at Work Regulations 1989
 - The Fire Precautions (Workplace) Regulations 1997 (Enforced by the Fire Authority)
 - The Regulatory Reform (Fire Safety) Order 2005*
 - Current Building Regulations (Where new building, or structural alterations are involved)
 - The Health Act 2006 and regulations made there under (Prohibition of smoking in workplaces)
27. The Council is the enforcing authority for these Acts and Regulations except where indicated and is able to provide advice on compliance, through the Environmental Health Service.
28. ~~Premises licence holders will be required to comply with the terms of the Disability Discrimination Act 1995, which came into effect in October 2004, and not to treat disabled people in a less advantageous way. The Council will, therefore, expect adequate provision to be made for disabled people in licensed premises.~~

Equality and Diversity

The Council encourages the promotion of a culturally diverse range of entertainment, which is available to all the community.

The Equality Act 2010 applies to all licensed premises and those who operate them. It also places a legal duty on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment,

pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is discriminatory to treat a person less favourably than another person, because that person has one or more of those protected characteristics.

Operators and applicants are obliged by the Act to make reasonable adjustments to help disabled persons access their goods, services and facilities where those persons would be at a substantial disadvantage compared to non-disabled persons and this extends to persons who are workers.

The Council has an Equality Strategy which sets out its approach to equality and diversity and how it implements the public sector equality duty.

29. The provision and maintenance of safe premises is considered fundamental to meeting the public safety objective. Applicants and licensees will therefore need to carefully consider how this will be achieved, taking into account the nature of the premises and the intended use. Applicants should refer to the guidance issued by *the Home Office*, which provides a good overview of the measures that should be considered when preparing the operating schedule in relation to public safety.
30. The operation and management of the premises will also be critical to achieving the public safety objective and the Council will therefore expect this to be adequately addressed in the operating schedule. In particular the Council will expect the following matters to be addressed and, where necessary, implemented in premises licensed for any entertainment activities:
 - The maintenance of the premises and its systems and equipment with respect to safety
 - The development and implementation of safety procedures and safe working practices
 - Supervision, stewarding and security of the public, including the use of registered door supervisors, where appropriate.
 - The maximum numbers of patrons permitted on the premises (including where necessary limits in parts of premises, such as dance floors and bars) and how this will be controlled.
 - The prevention or control of illegal substances
31. Whether or not premises are likely to give rise to noise disturbance will depend on a number of factors including the size and nature of the venue, its location, the nature of the activities conducted, the nature of the clientele and the hours of operation.
32. For premises where noise disturbance is likely to occur, the Council will expect the operating schedule to address how it will be controlled. Applicants will need to take potential noise disturbance into account when considering their proposed hours for licensable activities.
33. Advice on how to minimise noise disturbance from licensed premises can be obtained from Environmental Services. Any guidance will be in keeping with the principles laid down in this policy and the official guidance from the Secretary of State.
34. The use of illegal and contraband substances in licensed premises is a matter of concern to the Council and the police. Where the use of these substances is likely to

occur the Council will expect the operating schedule to detail what arrangements will be made to control the use of these substances. This will probably include the use of equipment that can be used to locate drugs, closed circuit television and drug boxes that customers can use to dispose of drugs that they may be carrying. These problems are most likely to occur in such premises as night clubs or public houses where a large element of entertainment is provided.

35. Under the provisions of the Health Act, 2006 smoking is not permitted in workplaces. This includes all indoor areas in premises to which the public or club members have access as these will also be working areas for staff. Smoking is permitted within a sheltered area that has a roof covering and is open on at least 50% of the sides. If this area is to be used for the consumption of alcohol or any other licensable activity it must be shown on the plans attached to the licence. An open structure which may be provided for smoking will not provide any noise attenuation and this has the potential for causing noise problems for residents in the vicinity. In submitting an application for a premises licence or club certificate the applicant should indicate in their operating schedule whether facilities will be provided for patrons or club members to smoke and what arrangements will be made to avoid disturbance to adjoining residents.
36. ~~Cigarettes, cigars and tobacco shall not be sold to anyone under eighteen years old and although the sale of these items is not a licensable activity it does impact on the licensing objective that children shall be protected from harm when on the premises. If cigarettes, cigars or tobacco or any other items where there are age limits on the person purchasing the product are to be sold the operating schedule should show what action will be taken to avoid underage sales. This will be particularly important if tobacco products are to be sold from a vending machine. The use of vending machines may in certain circumstances be unacceptable.~~
37. Surrey County Council Trading Standards Service and the Police enforce the legislation that imposes a lower age limit on customers purchasing alcohol. ~~and cigarettes. Sales of such items to under-age customers are a matter of concern to both these organisations and the Council shares this concern.~~
38. ~~Under previous legislation the~~ **The** Trading Standards Service and the Police **have** worked with licence holders, particularly in the off-licence trade, on how to set up systems to avoid sales taking place to under-age customers. The Trading Standard Service will, in response to complaints and local intelligence, continue to conduct regular covert test purchasing exercises. Both the Trading Standard Service and the Police believe there is a link between alcohol and a range of crime and disorder issues, and the Council will address these concerns.
39. In relation to the age limit on customers purchasing alcohol and some other goods, the Council will expect the operating schedule to show:-
 - The arrangements that will be made to ensure that staff serving alcohol and goods subject to these restrictions, have received adequate training on the law relating to this subject.
 - Details of training material that will be issued to staff and the means that will be used through appraisals and tests, to ensure that staff have an understanding of the material.
 - How records will be kept to show details of the training that has been given, the

training material that has been issued and the appraisal meetings and tests that have taken place to ensure that staff are aware of the requirements. Licence holders will be expected to keep these records on the premises, possibly in an **employee's** personal file, and to make them available for inspection by Trading Standards Officers and the Police if required.

40. The training that is given, that will need to be refreshed periodically, will be expected to ensure that staff have a basic knowledge of:-
 - The licensing legislation.
 - Methods of checking identification for proof of age such as, driving licences or passports.
 - How to confront customers whom staff believe to be under 18 years of age and to demonstrate that this is within their capabilities.
41. The operating schedule will be expected to show the arrangements that will be made at the point of sale to ensure that the sale is directly authorised by a person aged 18 of years.
42. Licence holders will be encouraged to keep registers of transactions that have not been completed, because the customer has not satisfied age restriction requirements.
43. The Council will expect details of how these records will be kept to be included in the operating schedule to demonstrate that the responsibility for checking the age of customers is taken seriously. Refusal books should be kept on the licensed premises and be made available for inspection by the Council's Enforcement Officers, the Trading Standards Service or the Police. The refusals book should preferably give details of the name and age of the customer if possible and a description of the appearance of that person.
44. The Council will also expect provision to be made for closed circuit colour television systems to be installed in premises to help prevent and combat the illegal sale of alcohol and some other goods to customer aged less than a legal limit. Provision should also be made for periodic monitoring of the system or recording of images.
45. Details of the means used to record sales, particularly in premises where alcohol is not the main product sold, should be included in the operating schedule. The Council prefer the use of electronic systems **such as a till prompt** if the age of the purchaser needs to be checked. It is felt that this would assist employees to be aware of when such checks should be undertaken.
46. ~~Details of any cigarette machines to be sited in the premises, particularly in pubs, restaurants and clubs, should be included in the schedule and, where possible, licence holders should have due regard to guidelines issued by the National Association of Cigarette Machine Operators. Cigarette machines should be sited in positions that are clearly visible to members of staff so that attempted purchases by young people can be observed.~~

Reasons

47. The operating schedule is intended to show how the licence holder will operate the premises to satisfy the licensing objectives. In this respect it is important that the

applicant indicates how they intend to be good neighbours to residents and to other business interests in the area and the practical measures that will be taken to prevent disturbance to local residents and to reduce noise emanating from the premises. The restriction on selling alcohol to persons under the age of 18 needs to be enforced to protect children from harm and such restrictions are best enforced at the point of sale.

Operating Schedules in Relation to Premises Where Alcohol is Supplied for Consumption off the Premises

Policy

48. The Council will expect the operating schedule to indicate the arrangements which will be made for selling alcohol in such a manner as to preclude purchases being made by customers who appear likely to consume the alcohol in the vicinity of the premises contrary to any legal restrictions.
49. Where alcohol is sold in conjunction with other items such as groceries, newspapers, confectionery etc. at a general check out point the operating schedule should indicate the arrangements which will be made for training staff employed at the checkout to ensure that they are conversant with licensing requirements.
50. Retail outlets selling other items in addition to alcohol will normally be permitted to sell alcohol at all times when the premises remain open for the sale of those other items. If, however, the premises are to remain open at times when the sale of alcohol is not permitted at the premises the operating schedule should indicate the arrangements which will be made to preclude any alcohol from being sold.
51. The operating schedule should also indicate what action would be taken to prevent the sale of alcohol to any person who appears to be intoxicated or acting in a disorderly manner.

Reasons

52. Restricting the sale of alcohol to any person who appears to be intoxicated or who is acting in a disorderly manner is aimed at preventing crime and disorder. This also applies to those persons who purchase alcohol with the intention of consuming it in an area where the drinking of alcohol is not permitted as prescribed by the Council under the Criminal Justice and Police Act 2001.

Policy for Premises Where Alcohol will be Consumed and/or Where Entertainment will be Provided

53. The Council will expect the operating schedule to indicate how the premises will be managed and operated so as to promote the safety of the public, prevent public nuisance to people in the vicinity, protect children attending the premises from harm and minimise the risk of crime and disorder in and around the premises.
54. Proposals for reducing noise emanating from these premises may include keeping doors and windows closed, providing adequate mechanical ventilation, reducing sound levels in conjunction with a sound limiting device and installing sound proofing to contain sound and vibration.
55. If it is envisaged that people will queue to enter the premises, the operating schedule should show how these queues will be supervised. Persons responsible for

controlling these queues must be registered with the Security Industry Agency as door supervisors and the operating schedule should indicate how clear instructions will be given to these supervisors as to their duties and responsibilities.

56. The operating schedule will need to give details of the supervisory arrangements within the premises for controlling, where necessary, both staff and patrons.
57. The operating schedule will also be expected to specify the supervisory arrangements which will be made for patrons leaving the premises particularly late at night or early in the morning or when a large number of patrons leave the premises at or about the same time. When appropriate, this should include:
- assessing whether there is a problem and how best to deal with it;
 - erecting prominent notices at the exits to premises asking customers to leave quietly and not to slam car doors;
 - making loudspeaker announcements at the premises at appropriate times to the same effect;
 - instructing door staff to ask customers leaving the premises to leave the area quietly;
 - reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down;
 - ensuring the availability of licensed taxis, mini-cabs or appropriate public transport to take patrons away from the premises;
 - arranging for door supervisors, designated premises supervisors or a manager to patrol nearby streets in appropriate cases;
 - banning from the premises people who regularly leave in a noisy fashion;
 - increasing outside lighting levels;
 - preventing patrons from using private forecourts for eating and drinking etc. after 23:00 hours;
 - providing from time to time, as necessary, a layout plan showing the use that will be made of all areas within the premises; and
 - specifying access and egress routes and ensuring that such routes are used by patrons.
58. The Council will expect the premises to be constructed to the highest possible standards of safety and that the requirements of health and safety at work and fire safety legislation has been satisfied. The technical standards published by the District Surveyors' Association shall be addressed where appropriate.
59. The Council may expect the operating schedule to specify the numbers of toilet facilities to be provided for patrons and their availability after closing time for patrons leaving the premises.
60. Operating schedules should include proposals to **promote the prevention of** crime

and disorder. This is considered to be particularly important for premises remaining open late at night, or larger premises used for public entertainment such as a night club. Proposals could include providing close circuit television inside and outside the premises and metal

detection and search facilities; instituting procedures for assessing and minimising risks associated with *drinks* promotions, ~~and events such as happy hours and eating and drinking competitions;~~ and measures to prevent the use of supply of illegal drugs. Other proposals might include employment of licensed door supervisors, appropriately trained staff and joining a pub watch scheme or similar organisation aimed at ensuring effective liaison with the local community.

Reason

61. The Council takes the view that the matters set out above will need to be addressed to satisfy the statutory requirements as set out in sub-section 17(4) of the Licensing Act 2003 as all these matters are relevant to the promotion of the licensing objectives. The operating schedule will form the basis for conditions that will be attached to the premises licence or club premises certificate. It will then be unlawful not to comply with these conditions. *It is accepted that section 19A of the Act has expanded mandatory conditions to address irresponsible promotions, in addition to other requirements and restrictions including an age verification policy, the availability of potable water, specific measures for the supply of alcohol and a ban on the sale of alcohol below cost price.*

Conditions - Policy

62. The Council can only impose conditions on premises licences based on the operating schedule and if relevant representations are received and the application has to be heard by the Council as licensing authority. Conditions will then only be imposed if after hearing the views of the applicant they are considered appropriate *necessary* for the purpose of promoting or achieving one or more of the licensing objectives.
63. Conditions attached to premises licences will focus on matters which are within the control of individual licensees. Attention will therefore centre on the premises and places being used for licensable activities and the vicinity of those premises and places. In addressing these issues a primary consideration will be the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. The licensing legislation will not be used as a mechanism for the general control of anti-social behaviour by individuals once they are away from the premises and therefore beyond the direct control of the individual, club or business holding the licence.
64. Conditions over and above statutory conditions and measures set down in the applicant's operating schedule will only be made if representations are made by a responsible authority or interested party.
65. Conditions attached to licences and certificates will be tailored to the individual style and characteristics of the premises and events concerned.
66. In drafting conditions, the Council will have regard to the guidance issued by the Secretary of State. Conditions will not be imposed that duplicate protection provided by other legislation relating to matters such as health and safety at work and fire safety.
67. Officers will seek to discuss proposed conditions in advance with either the applicant

or their representative or both with the aim of achieving a mutually agreeable level of protection to the public and fulfilment of the licensing objectives.

Reason

68. The Council considers that the judicious application of licence conditions will make a positive contribution to the promotion of the four main licensing objectives. The Licensing Act 2003 empowers the Council to impose conditions where they are appropriate **necessary** for this purpose and they address representations made at a hearing.

Location of Premises, Licensing Hours and the Prevention of Nuisance

General

69. Licensing authorities are empowered, following representations and a hearing, to determine the hours when licensable activities may take place.
70. *The Live Music Act 2012 and the Deregulation Act 2015 have amended the Licensing Act 2003. No permission is required for amplified Live Music or any playing of Recorded Music between 0800 and 2300 in certain circumstances provided the audience does not exceed 500. There is also a limit to the size of the audience for unamplified live music.*

Such circumstances include premises authorised for the sale of alcohol for consumption on the premises, any workplace, church hall, village hall, community hall (or similar premises), local authority premises, school or hospital providing consent of the person responsible for the premises is obtained.

Policy

71. While recognising the benefits which could be derived from removing limits on the hours that licensable activities may occur which were previously in force, the Council also recognises that the risk of disturbance to local residents is greater when these activities continue late at night and into the early hours of the morning. The nature of the activities taking place, the location of the premises, the impact on the neighbouring area and the management of the premises are also very relevant to this consideration. Without proper safeguards it is felt that the risk of residents being disturbed by noise emanating from premises and patrons leaving those premises will increase as the night progresses.
72. The Council will endeavour to strike a fair balance between the needs of licence holders, the patrons of the licensed premises and the effect that those licensed premises will have on local residents particularly with regard to disturbance and noise.
- The Licensing Authority will therefore give more favourable consideration to applications with the following closing times:*
- *Public Houses and Bars* ————— *2300hrs - Sunday to Thursday*
Midnight - Friday and Saturday
 - *Nightclubs* ————— *0100hrs - Sunday to Thursday*
0200hrs - Friday and Saturday
 - *Restaurants and Cafes* ————— *2300hrs - Sunday to Thursday*
Midnight - Friday and Saturday

• ~~Off Licences~~ ~~2300hrs - Monday to Sundays~~

~~The above closing times provide a guideline for applications only; they will not be the sole determinant of whether a licence is or is not granted. The Licensing Authority recognises the importance of flexibility in determining licensing hours and therefore each application will be considered on its own merits. Fixed closing times, staggered closing times and zoning may be appropriate if there is evidence these mechanisms are justified to promote the licensing objectives.~~

Reason

73. The prevention of public nuisance is one of the four licensing objectives and the location of premises in relation to residential areas and in other sensitive places and the licensing hours for licensed premises are extremely relevant as to whether the licensable activities will cause a public nuisance. ~~the most recent s182 guidance provided by the Home Office recognises that different licensing approaches are appropriate in different areas. Evidence for the effective management of opening hours, and, in particular, closing times is strong.~~

Location and Impact of Activity

Policy

74. The Council will have particular regard to the impact on local residents of activities taking place at premises. In considering this matter at a hearing, the Council will expect to consider amongst other things, the level of impact that can arise from noise and vibration, litter, parking, people coming and going, crowds and queuing and whether the activities at the premises are likely to be particularly unacceptable late at night. Premises licence holders for premises remaining open after midnight, will be expected to have arrangements in place to control noise and the patrons of those premises late at night.

Operating Hours for Licensable Activities

Policy

75. **The times when licensed premises will be permitted to operate whilst licensable** activities are taking place will be decided on the merits of each application but licence holders will be expected to apply more stringent controls/procedures if the premises remain open after 23:00 hours. Operating schedules for premises remaining open after 23:00 hours will be expected to show
- the additional measures that will be taken by the licence holder/applicant to reduce noise and to monitor and control people entering and leaving the premises at a time when any disturbance caused is more invasive to residents. The level of these measures should be much higher for premises remaining open until late at night or into the early hours of the morning;
 - the sound attenuation measures for premises remaining open until midnight to reduce noise disturbance and where appropriate the monitoring arrangements for car parks close to residential areas to minimise disturbance caused by slamming doors, unruly behaviour in the car park or car **head**lights shining in the windows of nearby houses;

- the additional provision which will be made in premises remaining open after midnight for an entrance foyer, closed circuit television in the foyer, a cloakroom, structured seating, adequate air conditioning, a dance floor and supervision by registered door staff. Where appropriate a “wind down” period when **any recorded** music is played at a lower volume and at slower rhythm may also be appropriate;
 - for premises remaining open beyond midnight much higher standards would be expected for premises classified as nightclubs together with provision for a club membership scheme or an entry charge; and
 - for premises remaining open beyond 02:00 hours an assessment of the effect that these later opening hours are likely to have on people living and working in the vicinity of the premises.
76. Much of the borough is very sensitive to the impact of licensed activities because it is either residential in character or close to residential areas. Many shopping areas are adjacent to residential areas, including flats above commercial premises. In addition the impact of traffic and parking related to licensed premises can be considerable. Even where a majority of customers arrive on foot or by public transport, the additional parking demand may be significant, especially where there are already a number of licensed premises.

Consideration of the impact of licensed activities

Policy

77. When considering whether any licensed activity should be permitted following the receipt of relevant representations, the Council as Licensing Authority will assess the likelihood of it causing unacceptable adverse impact by considering the following factors amongst other relevant matters:
- the type of use and number of customers likely to attend the premises;
 - the proposed hours of operation;
 - the means of access to and egress from the premises;
 - the scope for mitigating any impact;
 - how often the activity occurs
 - whether off street parking in the vicinity of the premises is likely to cause a public nuisance and if so the provision that has been made by the applicant to provide car parking facilities or to ensure that off-street parking is available
 - and, in considering any application which is already licensed, the Council will take into account any evidence:
 - of past demonstrably adverse impact from the activity especially on local residents;
 - public nuisance resulting from unacceptable levels of off street car parking in the

vicinity caused by patrons of the premises and how this will be addressed by the applicant. This could include encouraging the use of taxis by patrons.

- that, if adverse impact has been caused, appropriate measures have been agreed and put into effect by the applicant to mitigate the adverse impact.

Reason

78. The prime purpose of this part of the policy is to achieve the licensing objective of preventing public nuisance. In furtherance of this aim the policy lists particular matters that the Council will take into account in considering whether a licensed activity is likely to cause an adverse impact, particularly to residents living in the vicinity of the premises.
79. The precise nature of the activity, especially for entertainment, will be a factor in considering the impact, principally in terms of the age and orderliness of the customers.
80. Levels of noise from licensed premises which may be acceptable at certain times of day may not be acceptable later in the evening or at night when ambient noise levels are much lower.
81. Disturbance to residents living in the vicinity of the premises caused by the arrival, queuing and departure of customers is likely to be unacceptable and if this is likely to occur should be addressed in the operating schedule.
82. Steps must be identified to mitigate or prevent any adverse impact and if such measures are reliable an activity may be licensed. In accordance with Government advice the decisions taken by the Council will focus on matters within the control of individual licensees and others granted relevant permissions and the steps they can take to achieve the licensing objectives. These matters will centre on the premises and places being used for licensable activities and the likely impact of those activities on members of public living or working in the vicinity of the premises concerned.
83. In taking its decisions the Council must accept the difficulty a licence holder has in preventing anti-social behaviour by individuals once they are beyond the direct control of that licence holder. Licence holders would, however, be expected to have direct control of their patrons whilst they are present anywhere on the licence holder's property including any buildings and surrounding land. However, the Council will, when considering representations, take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in anti-social activities to the detriment of residents or businesses in the vicinity of the premises. Furthermore it will also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the Borough.
84. The aim of the policy is to achieve a balanced approach to these difficult issues.

Tables and Chairs outside Premises

General

85. The provision of tables and chairs outside the premises either on the highway or on private land can enhance the attractiveness of the venue by encouraging a continental style café culture. Late at night people sitting at these tables can

however contribute to noise problems by encouraging patrons and passers by to loiter rather than disperse.

86. The placing of tables and chairs on the public highway will need the consent of the Surrey County Council. On private land no consent is needed

Policy

87. So far as the public highway is concerned the County Council will generally only allow hours of operation of 9 a. m to 6 p.m. In predominantly commercial areas such as shopping centres hours of operation of 8 a.m. to 11 p.m. on Monday to Thursday, 8 a.m. to 11.30 p.m. on Friday and Saturday and 8 a.m. to 10.30 p.m. on Sunday may be permitted. At the conclusion of these hours the Council would subject to any representations that are received, expect the removal of these tables and chairs.
88. In the case of tables and chairs on private land the Council will expect the applicant to indicate in their operating plan the hours when these tables and chairs will be in use. The use of outside areas after 23:00 hours is likely to be unacceptable although this will depend upon the location of the premises.

Reason

89. This policy is intended to strike a fair balance between the needs of those wishing to enjoy refreshment in the open air and the need to prevent safety and nuisance problems.

Table, Pole and Lap Dancing, Striptease

General

90. Striptease, table, pole or lap dancing only need licensing inasmuch as they will probably involve such licensable activities as performance of dance or live or recorded music. In considering any representations which may be made in respect of licence applications the Council must confine itself to the promotion of the licensing objectives. Although there might be moral or religious objections to striptease, table, pole or lap dancing the application cannot be refused or amended on these grounds. If the activity could lead to crime and disorder or was likely to be harmful to children or young adults then any representations made on these grounds could be considered and if adequate provision was not made by the applicant to avoid the risk of this occurring the application could be amended.

Policy

91. Where licences are granted and the licensable activities could involve striptease, table, pole or lap dancing or similar adult entertainment it will impose conditions designed to ensure that children are not admitted to and cannot witness these activities and to prevent crime and disorder problems. For example an area proposed for striptease shall:
- be in a position where the performance cannot be seen from the street;
 - be in a designated area of the premises with segregation from the audience;
 - be in a position where the performers will have direct access to the dressing room without passing through or in close proximity to the audience; and

- whilst striptease entertainment is taking place no person under the age of 18 shall be on the licensed premises and a clear notice shall be displayed at each entrance to the premises in a prominent position, so that it can be easily read by persons entering the premises, stating that “no person under 18 will be admitted”
92. To prevent the possibility of children seeing unsuitable advertisement the policy of the Council will be to provide that except with the consent of the Council there shall be no external advertising of the striptease entertainment either at the premises or in its immediate vicinity.
93. In considering the grant of applications involving striptease the Council will also have regard to any increase in the risk of public nuisance or disturbance to residents living in the vicinity and if these problems cannot be addressed will consider rejecting the application or attaching appropriate conditions.

Reason

94. These policies are designed to further the licensing objective of protecting children from harm by preventing them from being exposed to unsuitable material or acts.

Other Controls

95. Other means that will be used to control customers behaving in an anti-social manner when leaving licensed premises will include:
- positive measures to create a safe and clean environment in partnerships with local businesses, transport operators and other departments of the Council;
 - powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
 - enforcement by the police of the laws concerning disorder and anti-social behaviour, including the issue of fixed penalty notices;
 - the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
 - the confiscation of alcohol from adults and children in designated areas;
 - police powers to close down instantly for up to 24 hours any licensed premises or temporary events on the grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises; and
 - the power of the police, other responsible authority or an interested party to seek a review (possible revocation) of the licence or certificate in question.
96. For a variety of reasons many of these mechanisms will be of limited effectiveness and value in dealing with anti-social behaviour away from the premises. This is why it is the policy of the Council to consider very carefully the grant of a licence particularly when the hours sought extend into the early hours of the morning.

Protection of Children

Introduction

97. The Act has allowed children under 16 years of age to be present at licensed premises under certain circumstances and subject to a number of constraints. Further constraints may be placed on the attendance of children in this age group and also people under 18 years of age at licensed premises at the discretion of the Council and licence holders. Prevention of harm to children is an important licensing objective and the Council will therefore consider the circumstances obtaining at each premises on their own merits. The Council will not normally impose conditions requiring or prohibiting the admission of children to any premises, believing this should remain a matter of discretion for the licence holder. ~~(This reflects the view of the Home Office Department of Culture, Media and Sport that the use of licensed premises by children should be encouraged.)~~—Each application will nevertheless be considered on its merits and conditions will be imposed to protect children if this is deemed **appropriate, necessary**.

Policy

98. The Council will have particular regard to the safety of children when considering licence applications. Applicants will be expected to indicate in their operating schedules the measures that will be taken to protect children who will be present on
- the premises from harm and conditions may be imposed if these measures are considered to be insufficient. It will be important to address this issue for premises:
 - where entertainment or services of an adult nature or it involves table, pole, lap dancing or striptease are proposed;
 - where there have been convictions of members of the current staff at the premises for serving alcohol to minors or there is evidence to suggest that underage drinking takes place at the premises;
 - with a known association with drug dealing or drugs use;
 - where there is a strong element of gambling on the premises; and
 - where the supply of alcohol for consumption on the premises is the exclusive or primary purpose service provided at the premises.
99. Access to premises may be precluded or limited for people under 18 years of age if it is felt that restrictions are **appropriate** necessary to prevent harm to children. In these circumstances consideration will be given to adopting one or more of the following provisions:
- limiting the hours when children may be present;
 - specifying a minimum age for persons to be admitted;
 - prohibiting the admission of children under certain ages when particular specified activities will be taking place;
 - specifying requirements in relation to people under 18 years of age being accompanied by an adult; and
 - excluding all people under 18 years of age when any licensable activities are

taking place.

100. Where there is provision of entertainment specifically for children (e.g. a children's disco) the Council will require the presence of sufficient adults to control the access and egress of the children and assure their safety.
101. Where the exhibition of films is permitted the authority will expect the age restrictions of the British Board of Film Classification (BBFC) to be complied with in respect of the films to be exhibited. Any decisions taken by the Joint Film Licensing Committee, which has the authority to determine classifications on behalf of local authorities in Surrey including Surrey Heath Borough Council will, however, be taken into account.
102. In relation to specialist film festivals where it is desired to show films not classified by the BBFC the Council will, provided adequate notice has been given, classify the films concerned. To achieve consistency and the protection of children the Council will use the guidelines published by the BBFC.

Reason

103. These policies are designed to give licence holders flexibility to allow children to be present in appropriate areas within the licensed premises subject to the protection of children from harm licensing objective being met.

Drugs

General

104. The use of illegal drugs particularly those which are commonly referred to as 'recreational drugs' can hold grave dangers if misused and can even led to fatalities. Factors that have contributed to deaths from drugs include lack of drinking water, excessive drinking of water, an overly hot environment with inadequate ventilation, or a lack of adequate information about drugs.
105. Drugs alter the way people behave, so their distribution and possession is controlled by law. Controlled drugs are usually manufactured and supplied illegally, with criminal involvement in their distribution. Drugs manufactured illegally often vary in quality and strength. This puts people taking such drugs in danger.
106. The Council recognises that drug use by people in a club environment is not something that is relevant to all licensed premises. Many entertainment venues such as night clubs and dance venues can be popular both with recreational drug users and suppliers.

Policy

107. Holders of licences for premises where the use of drugs is likely to take place will be expected to take all reasonable action to prevent the entry of drugs into the premises, stop drugs changing hands within the premises and take all practical measures to prevent drug misuse.
108. In particular the Council will expect licensees of such venues to be familiar with the contents of **Chapter 4 (drug awareness) of the British Institute of Innkeeping Awarding Body Level 2 handbook for the Award in Drug Awareness for Licensed Hospitality Staff National Certificate for Entertainment Licensees** and to follow the recommendations of that handbook.

109. It is hoped that licensees will follow these recommendations on a voluntary basis. In the event of representations being made about the use of drugs at the premises could also lead to an application for the licence to be reviewed with the possibility of the licence being revoked.

Reason

110. The purpose of this policy is to further the crime prevention objective and to improve public safety by preventing a tragic loss of life caused by drug abuse, overheating and other factors.

Planning

Introduction

111. Any premises for which a licence is required must also have an authorised use under town planning legislation. This could be for:
- "Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises" (Use Class A3);
 - Drinking establishments, including pubs and wine bars (Use Class A4)
 - Hot Food takeaways for consumption off the premises (Use Class A5)
 - Assembly and leisure (Use Class D2) which includes concert halls, dance halls and indoor/outdoor sports and recreation;
 - a retail shop licensed for the sale of liquor e.g. an off-licence (Use Class A1); or
 - a hotel which has a restaurant or bar included in its authorised use (Use Class C1).
112. The references to use class come from the Town and Country Planning (Use Classes) Order 1987, as amended. 1987. The order classifies uses and labels them with a letter and a number. Not all uses come within a use class (sui generis).
113. ~~The Council's planning policies are set out in the Surrey Heath Local Plan and are subject also to government requirements set in the National Planning Policy Framework and Planning Practice Guidance documents. The Council's Planning Policies are set out in the Surrey Heath Local Plan supplemented by the Surrey Structure Plan Government guidance in the form of Planning Policy Guidance Notes and Regional Planning Policy Guidance Notes is also relevant.~~
114. ~~The strength of these policies is that there is an obligation both on the Council, as local planning authority, and the decision maker on any appeal, to give considerable weight to them. This helps to ensure consistency in the decision making process. The impacts of proposals for Drinking Establishments (Use Class A4) and Hot Food Takeaways (Use Class A5) and Nightclubs (Use Class sui generis) will be considered in combination with other such uses within the town centre, in accordance with policy TC3 of the Camberley Town Centre Area Action Plan 2011-2028.~~
115. In general, planning consents authorise a type of use, whereas licences relate to a particular premises and operator and may only cover a part of the premises. A

planning consent is attached to the premises and is usually permanent. Unlike a licence it cannot normally be reviewed or revoked. Planning is concerned with the premises and the use and hours proposed and it takes no account of the suitability or otherwise of the applicant.

116. Within certain limits, the activity may change without a new planning consent. A planning consent for an entertainment use, for instance, may cover activities that can have a wide range of different impacts in the locality. The precise nature of the impact of the specific activities proposed by a prospective licence holder needs to be considered when an application is made for a licence.
117. In some cases where an application is made for a licence the town planning use will already be authorised by a previous planning consent or because the premises has long-standing lawful use. A new application for planning consent is therefore often not required. However, three points must be made:
118. The existing planning consent might have conditions restricting the use of the premises in some way e.g. the hours of operation. In that case, anybody seeking a licence to operate beyond those hours would involve obtaining a revised planning consent or a relaxation or removal of the condition.
119. The existence of a planning consent (or lawful use) where there is no condition on the usage does not mean that a licence for late hours of operation or a particular entertainment would necessarily be appropriate. If an existing planning consent has conditions on the hours of operation it does not follow that a licence for a particular activity will be granted up to the hours specified in the planning consent.
120. Where a long standing planning consent has no condition on hours, or where there is lawful use without planning consent, it is likely there has been no rigorous consideration of late night impact during the planning process. Experience within the borough has revealed the importance of these issues and planning consents are no longer likely to be granted without such constraints.

Policy

121. Applicants will generally already have appropriate planning consent or have applied for such consent before applying for a licence to use premises for licensable activities. An application for a premises licence does, however, have to be considered by the Council as licensing authority whether or not planning consent has been granted in respect of the premises.
122. The absence of planning consent would not be grounds for refusing the application but no use of the premises for licensable activities would be permitted until the licence had been issued and appropriate planning consent for the use of the premises for those activities had been granted. Similarly the licence holder will not be able to use the full hours permitted under the terms of a licence unless planning consent for the use of the premises for the purpose of that licence is in force.
123. **The Executive Head – Regulatory Head of Planning Services** acts on behalf of the Council in its capacity as a planning authority and as a responsible authority and may make representations on planning grounds in respect of any premises licence application where it is felt that licensing objectives will not be satisfied.
124. The Council will therefore consider applications for premises licences and club certificates in the absence of planning consent but it is recommended that planning

consent should first be obtained.

Reason

125. This policy is intended to avoid unnecessary duplication and thus to comply with the guidance.

Other Strategies

126. The Council will integrate its various strategies to achieve the licensing objectives in the interests of clarity for applicants and effective determination.
127. Applicants for licences will be expected to have taken into account in determining their operating plans, local crime prevention strategies, planning and transportation policies and tourism and cultural strategies. Applicants will also be expected to address the prevention and clearance of litter and other waste materials arising from the use of the premises.

Temporary Events and Permitted Temporary Activities

General

128. The Licensing Act 2003 makes provision for activities that would normally require a premises licence, but which are of short duration. This includes the sale or supply of alcohol, the provision of regulated entertainment and late night refreshment
129. Temporary events which will be attended by 500 persons or more at any one time and/or will last more than 168 hours (7 days) will require a premises licence. In other cases a licence will not be required and the Temporary Event Notice (TEN) procedure will apply, subject to the following restrictions:
- No more than 15 temporary events may be held on the same premises in any 12 month period preceding the date of the event in respect of which notice is given. The number of events may be further reduced if events last for more than one day as the total number of days covered by 15 temporary event notices must not exceed 21 days.
 - No person (other than a personal licence holder) may hold a temporary event more than 5 times a year.
 - Personal licence holders are limited to a maximum of 50 events a year (which does not over-ride the limit of 15 events per premises).
 - Individual temporary events on the same premises must be separated by at least 24 hours.
130. A premises licence is needed if any of these limits are exceeded.

Temporary Event Notices

131. Any person intending to hold a temporary event is required to submit a Temporary Event Notice (TEN) to the Council at least 10 working days, not including the date of submission, before the event, using a statutory form supplied by the Council. Only

persons over 18 are permitted to give a TEN.

132. The following information must be supplied:

- the licensable activities to which the proposal mentioned in section 1 subsection (1) of the Act (“the relevant licensable activities”),
- the period (not exceeding 168 hours) during which it is proposed to use the premises for those activities (“the event period”),
- the times during the event period when the premises user proposes that those licensable activities shall take place,
- the maximum number of persons (being a number less than 500) which the premises user proposes should, during those times, be allowed on the premises at the same time,
- where the relevant licensable activities include the supply of alcohol, whether supplies are proposed to be for consumption on the premises or off the premises, or both, and
- such other matters as may be prescribed by the Government.

Policy

133. The Licensing Authority will take all practical steps to bring details of TENs to the attention of Surrey Fire and Rescue Service and will liaise with the Police and the Fire Authority on all TENs received. The Police *or Environmental Health* may issue an objection notice to the Council within 3 *workings* days, if they are of the opinion that the event would undermine the crime prevention objective set out in the Act.
134. If the Council receive an objection notice from the Police *or Environmental Health* a hearing will be held, to which the organiser will be invited and entitled to present witnesses. If the Council is satisfied that the event will undermine the crime prevention objective, it will serve a counter notice on the person who has submitted the TEN. The effect of a counter notice will be to prohibit the event.
135. The Council will also serve a counter notice if the basic requirements for a TEN are not met, for example if the numbers will exceed 499, or 15 events have already been held on the premises. A hearing will not be necessary in such cases.
136. The Council cannot impose any conditions on events covered by a TEN but will where appropriate issue advice to organisers on how to comply with the licensing objectives, in particular advice in relation to safety and the avoiding of public nuisance. The Council will also take action under health and safety and environmental legislation where necessary to ensure the safety and acceptability of temporary events.
137. Under the terms of the Act a TEN must be submitted not less than 10 working days before the proposed event. This is a very short period of notice, bearing in mind that the Council will need to issue appropriate advice and may have to hold a hearing. The Council will therefore encourage the organisers of temporary events to submit their TEN at least 28 days before the event. All publicity material and guidance issued by the Council on temporary events will include advice to submit TEN s giving

at least 28 days' notice.

Reasons

138. The Council has a legal duty to implement the requirements of the Licensing Act 2003 in relation to permitted temporary activities. It is important that temporary events should be conducted in a safe and reasonable manner and the Council will issue advice and take action under other environmental and safety legislation with a view to achieving this. Early notice of events is sought to facilitate the effective administration of the legal requirements of the Act.

Late night refreshment

General

139. The provision of late night refreshment is a licensable activity under the Act and is defined as the supply of hot food, or hot drink that is immediately consumable for consumption on or off the premises to which the public has access between the hours of 11.00pm and 5.00am the following morning. A licence for this activity will be required even if the premises is licensed for other activities under the Act.

Policy

140. The operating schedule must address how the four licensing objectives will be met, but the Council does not anticipate that a complex document will be required. The Council will expect the operating schedule adequately to address the issues of potential noise nuisance from the operation of the premises and the control of littering in the immediate vicinity of the premises.

Reasons

141. It is anticipated that noise nuisance, crime and disorder and littering will be the main problems likely to be associated with this activity.

Enforcement

142. Where necessary, enforcement action will be taken in accordance with the principles of the Enforcement Concordat and the Council's Licensing Enforcement strategy.
143. In particular regard will be given to the fundamental principles recommended by the Better Regulation Task Force for good enforcement. These are:
- Targeting - i.e. focusing on activities that give rise to the most serious risks or where hazards are least well controlled.
 - Consistency - i.e. similar approaches in similar circumstances to achieve similar ends.
 - Transparency - i.e. helping duty holders to understand what is expected and distinguishing between statutory requirements and guidance.
 - Proportionality - i.e. action taken should be proportional to the risk presented.
144. The Council has established protocols with the local Police and the Fire Authority on enforcement issues to avoid duplication and to provide for the most efficient deployment of Council, police and fire authority officers in respect of inspection of licensed premises and the enforcement of licensing law.

145. Surrey Fire and Rescue are primarily responsible for the enforcement of fire legislation in licensed premises and the Council will actively work in co-operation with them to ensure that fire safety is maintained at all licensed premises. This may include the imposition of conditions on licences relating to fire or public safety matters. In particular the Licensing Authority will pay particular attention to any comments or observation made by Surrey Fire and Rescue Service in respect of any application for a licence.
146. The policy of the Council will always be a light touch inspection regime for well managed and maintained premises with a targeted and graduated inspection and enforcement regime for problem and high-risk premises.

Late Night Levies and Early Morning Restriction Orders

At the date of this policy, the Council has not determined whether or not to implement these powers, but consideration to these powers will be given within the life of this policy.

CUMULATIVE IMPACT - SPECIAL POLICY

147. The Council will apply a special policy relating to cumulative impact as provided for by the guidance issued by the **Home Office Secretary of State** to the area of Camberley town centre bordered by High Street, Pembroke Broadway, Park Street and London Road (as shown on the attached plan). This area has been extended to encompass Southwell Park Road up to Southern Road and Lower Charles Street, back to the London Road, including the Atrium and surrounding premises.
This area has been identified as being under stress because the cumulative impact of the concentration of late night and drink led premises in this area has led to serious problems of crime, disorder and/or public nuisance.
148. The evidence for this special policy is set out on the Licensing Act 2003, webpage.
149. This special policy creates a rebuttable presumption that applications within the town centre area for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations are received about the cumulative impact on the licensing objectives, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact already being experienced.
150. For the purposes of this special policy material variation shall be a modification to the structure or use of the licensed premises which would be likely to exacerbate crime and disorder problems arising from the cumulative impact of licensed premises within the town centre area.
151. Applicants will need to address the special policy issues in their operating schedules in order to rebut such a presumption.
152. Despite the presumption against grant, responsible authorities and **any other persons interested parties** will still need to make a relevant representation before the Council may lawfully consider giving effect to its special policy i.e. if no representation is received, the application must be granted (subject to such conditions that are consistent with the operating schedule and any mandatory conditions required by the Act). However, responsible authorities or **any other persons interested parties** can make written representation maintaining that it is **appropriate** necessary to refuse the application for the promotion of the crime and disorder objective and referring to information which had been before the Council when it developed its statement of licensing policy.
153. The absence of a special policy in relation to any other area of the Borough does not prevent any responsible authority or **any other person interested party** making representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.
154. The Council will regularly review any special saturation policies to see whether they are still needed or should be expanded.
155. The Council will not take 'need' (i.e. the commercial demand for premises offering a particular type of licensable activity) into account when considering an application, as this is a matter for the market. However, the impact on the promotion of the licensing objectives of the number, type and density of licensed premises in a given area, may lead to serious problems of nuisance and disorder outside and some distance from

the premises. This is described as the 'cumulative impact', and is a proper matter for consideration by the Council.

(Insert cumulative impact plan here)

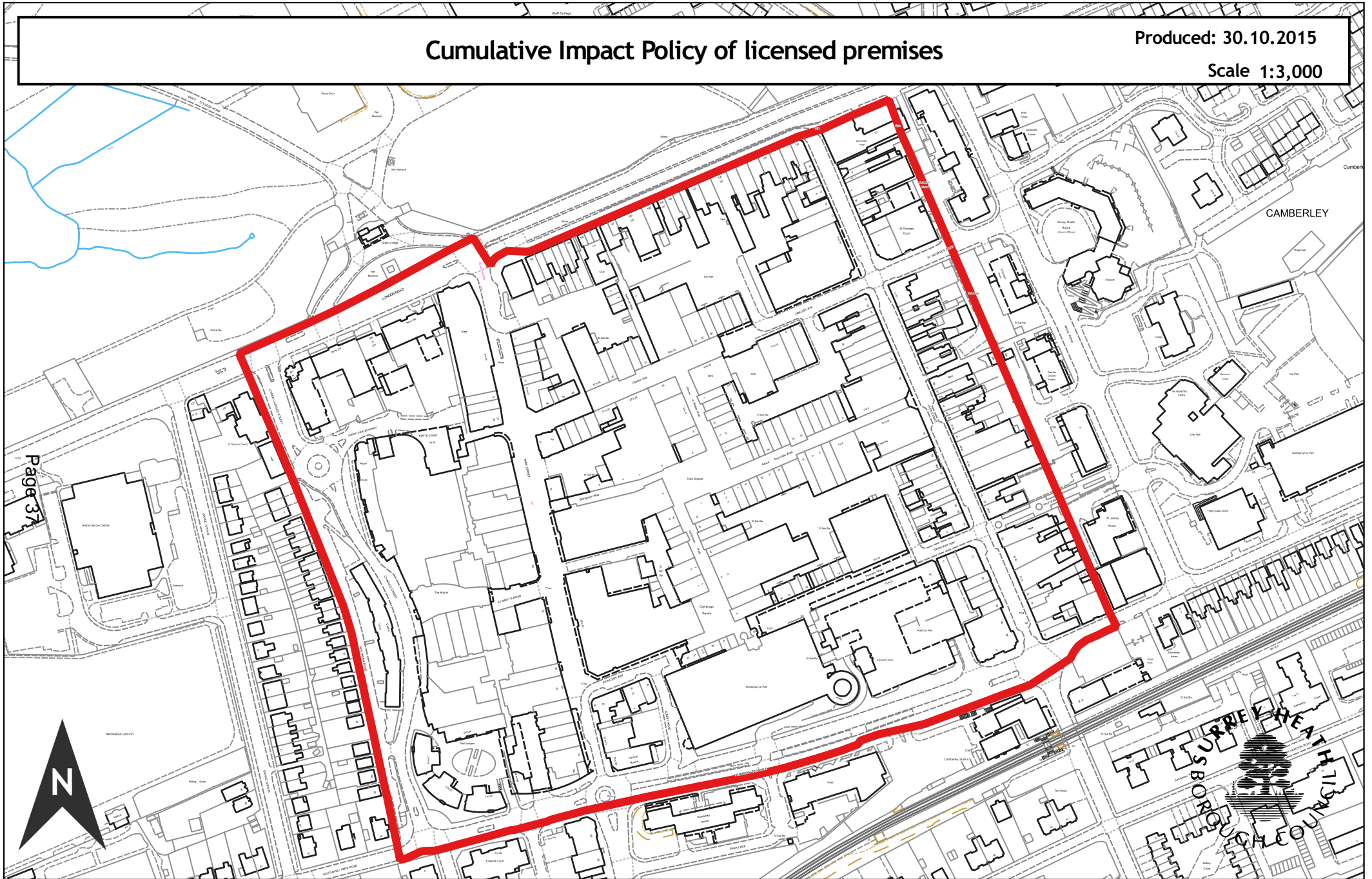
156. The Council will not use this policy solely:
- as grounds for revoking a licence or certificate when representations are received about problems with an existing licensed premises (after a licence or certificate has been granted or varied, a complaint relating to a general (crime or disorder or nuisance) situation in a town centre would not generally be regarded as a relevant representation if it cannot be positively tied or linked by a casual connection to particular premises), or
 - to refuse applications to vary an existing licence or certificate except where the modifications are directly relevant to the policy, for example where the application is for a significant increase in the capacity limits of a premise, and are strictly necessary for the promotion of the licensing objectives.
157. The Council recognises that there are other mechanisms both within and outside of licensing regime that are available for addressing the impact of unlawful and anti-social behaviour and nuisance once consumers are away from the premises e.g.
- positive measures to provide a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the Council
 - the provision of CCTV surveillance in the town centre, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols
 - powers to designate parts of the Borough as places where alcohol may not be consumed publicly
 - police enforcement of the law with regard to disorder and anti-social behaviour, including the issue of fixed penalty notices
 - **the Surrey Street Standards initiative**
 - the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk
 - the confiscation of alcohol from adults and children in designated areas e.g. use of the powers of confiscation contained in the Confiscation **of Alcohol** (Young Persons) Act 1997
 - police powers to close down instantly for up to 24 hours any licensed premises or temporary events on the grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance
 - the power of police, other responsible **authority authorities, including the Licensing Authority or any other person** ~~a local resident or business~~ to seek a review of the licence or certificate in question
 - **Public Space Protection Orders which can be used by a Council to restrict the consumption of alcohol in a public place.**
158. The Council will address these issues in line with the strategic objectives for crime and disorder reduction within the Borough.

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Cumulative Impact Policy of licensed premises

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**Minutes of a Meeting of the Licensing
Sub Committee held at Council
Chamber, Surrey Heath House on 5
January 2016**

+ Cllr Bill Chapman
+ Cllr Pat Tedder

+ Cllr Ian Sams

+ Present

- Apologies for absence presented

Substitutes: Cllr Ruth Hutchinson

In Attendance: Cllr Dan Adams

Legal Advisor to Sub Committee Mrs Laura James

Democratic and Electoral
Services Officer Mrs Lee Brewin

Surrey Heath Borough Council Mr Derek Seekings (Senior Licensing
Officer)

as Licensing Authority Mrs Paula Barnshaw (Licensing
Administration Officer)

Surrey Police Mr Rab Carnie
T/Inspector Jon Castell

Everest Cash and Carry Mr R Shrestha – Designated Premises
Supervisor

19/LS Election of Chairman

Resolved that Cllr Ian Sams be elected Chairman of this meeting.

20/LS Declarations of Interest

It was noted for the record that Members of the Sub Committee had received emails relating to social media messages regarding the review application from another Member of the Council. The Sub Committee Members advised that they would make their decision related only to the evidence provided at the hearing.

21/LS Licensing Act 2003 - Everest Cash and Carry

The Sub-Committee considered an application for a review of a Premises Licence relating to Everest Cash and Carry, 449 London Road, Camberley GU15 3JA.

The Licensing Officer presented his report to the Sub-Committee and notified representatives of the parties who had a right to speak at the meeting. He referred Members to the Licensing Objectives and relevant licensing legislation.

All relevant parties present introduced themselves and stated their reason for attending the Sub-Committee.

The Licensing Officer noted that the application was for the review of the premises licence relating to Everest Cash and Carry, 449 London Road, Camberley GU15 3JA.

The Licensing Officer reported that Surrey Police contended that the carrying on of licensable activities at the premises could seriously undermine the following licensing objectives:

- (i) The prevention of crime and disorder;
- (ii) Protection of children from harm.

It was noted that the fourth paragraph of section 3 of the Licensing Officer's report should read:

'the Sub Committee must take such of the following steps as it considers appropriate if any, for the promotion of the Licensing objectives...'

The Sub Committee was advised that following discussions between Surrey Police and Mr Shrestha, both parties had agreed a resolution for the Sub Committee to consider, namely to agree the imposition of the suggested conditions and no further steps.

Mr Carnie addressed the Committee and stated the following:

- Two test purchases were carried out on 9 September 2015 and 19 November 2015;
- Two 16 year old girls purchased some alcohol and were not asked for any ID;
- Fixed penalty notices were issued to a member of staff on each occasion;
- A review hearing had been called and it was requested that the licence be revoked or suspended for a specific period, to remove the current designated premises supervisor and replace all conditions on the licence as set out in the application;
- Following discussions prior to the hearing, it was proposed that the recommendations proposed by Surrey Police be amended to remove the revocation or suspension of the licence;
- Mr Shrestha had been provided with a Trading Standards approved staff training package by Surrey Police which also included a refusal book.

Concerns were raised by the Sub Committee about whether the training material supplied to Mr Shrestha prior to the first offence, had been put into practise. In addition the Sub Committee was advised that staff were not trained in operating the CCTV.

Mr Shrestha addressed the Committee and stated the following:

- Mr Shrestha requested that his licence not be revoked as the business was his livelihood; alcohol sales constituted 50% of total sales ;

- Mr Shrestha admitted that there was a language and cultural barrier with regard to his staff members;
- Staffing was adequate particularly as Mr Shrestha was in attendance on the premises most of the time during trading hours;

The Sub-Committee adjourned from 12.10 p.m. until 13.10 a.m. for deliberation.

Following deliberations on the application, Mrs James reported on the advice she had given to the Sub-Committee and that Members had taken into account:

- Section 52 of the Licensing Act 2003 and the Secretary of State's Guidance under section 182 of the Act;
- Relevant case law;
- The Council's Statement of Licensing Policy; and
- The written and oral evidence presented at the hearing.

The Sub-Committee had heard evidence from the Licensing Officer, Surrey Police and Mr Shrestha.

The Sub-Committee had noted that two breaches within 3 months was a serious issue and the responsibility for this rested with Mr Shrestha. It was also noted that the training pack had been provided to Mr Shrestha prior to the test purchases.

The Sub Committee concluded that the premises licence should be suspended for one day during licensing hours on the first Monday after the 21 day deadline for appeal rights. Members recognised that they were acting in the interests of the wider community. They were satisfied it was appropriate to modify the existing conditions of the licence for the promotion of the licensing objectives in issue. The agreement between the two parties was noted.

The public safety conditions and the Police recommendation in their application to revoke the licence and suspend the current designated premises should be rejected and condition 1 under Crime and Disorder was to be reworded as follows:

A personal licence holder will always be present at the premises during the hours that the premises are licensed to sell alcohol subject to:

- i) upon the cessation of a person engaged as a member of staff holding a personal licence and working at the premises:
- ii) the Designated Premises Supervisor shall notify the police of that person's departure within 48 hours of that event and;
- iii) there shall be up to 8 weeks permitted to allow for the process of engaging a replacement member of staff as a qualified personal licence holder to take place and;
- iv) the police will grant an extension of time for the recruitment of such replacement member of staff as a personal licence holder where there is evidence that a delay

in the application process has been caused by circumstances beyond the control of such applicant.

RESOLVED, that the Premises Licence for Everest Cash and Carry, 449 London Road, Camberley GU15 3JA, be suspended for the licensing hours on the first Monday after the appeals deadline, subject to the amended conditions in the operating schedule attached in the Decision Notice at Annex A.

Note: The Sub-Committee convened at 10.00. The Designated Premises Supervisor, Mr Shrestha had not arrived in time for the meeting. He was contacted and he subsequently arrived at 11.00. His late arrival was due to a misunderstanding regarding the start time of the meeting. He confirmed at the hearing he was happy for the hearing to go ahead at that time.

Prior to the hearing, Mr Carnie and T/Inspector Castell met with Mr Shrestha to discuss the review. Mrs James also spoke with Mr Carnie and T/Inspector Castell with the consent of Mr Shrestha and the sub-committee.

a DECISION NOTICE

Application by Surrey Police for Review of Premises Licence-Everest Cash and Carry, 449 London Road, Camberley, Surrey

This is an application by Surrey Police under section 51 of the Licensing Act 2003 for a review of the premises licence held by Ocata Limited of 9/10 Hippodrome House, Aldershot and relating to Everest Cash and Carry which is a small general store. No relevant representations were received from "any other persons", namely members of the public. No representations were made by any responsible authorities.

At the hearing of the application in attendance were:

Mr D. Seekings (Senior Licensing Officer)
Mrs P. Barnshaw (Licensing Administration Officer)

Mr R. Carnie (Police Licensing Officer)
Temporary Inspector Jon Castell

Mr R Shrestha- Designated Premises Supervisor

Mrs L. James- legal advisor to Sub Committee
Mrs L. Brewin- Democratic and Electoral Services Officer

Sub- committee members: Cllrs, P Tedder, B Chapman and I Sams (Chair) (R Hutchinson-substitute)

The Sub Committee delayed the start of the hearing to allow time to consider whether Mr Shrestha intended to attend the hearing. The hearing commenced at 11.00 am after Mr Shrestha arrived.

Our legal advisor told those present that there had been some comment on social media regarding the hearing and that the committee was aware that no such representations were to be taken into account in the decision- making process before us.

Mr Seekings presented his Report and confirmed that under paragraph 3, Next Steps, the legislation now provided that the steps the licensing authority may exercise are those it considers to be appropriate for the promotion of the licensing objectives, rather than 'necessary'.

The parties were then invited to present their cases:

Police Evidence before the Sub-Committee and representations

For Surrey Police, Mr Carnie advised there had been two test purchase exercises over a period of less than three months. On both occasions, different members of staff working at the premises had failed to request age identification. The test purchasers were aged sixteen. Both staff members accepted a fixed penalty for the offence of selling alcohol to under age persons.

Mr Carnie explained that he had had an opportunity to speak to Mr Shrestha before the hearing, along with Acting Inspector Jon Castell and it had been agreed that the Police would no longer pursue the request in their application that the sub committee took steps including the suspension or revocation of the premises licence. Whilst they still regarded the situation as very serious, Mr Shrestha had agreed that the additional conditions set out in their application, should be added to the licence. The officers felt that the conditions would assist Mr Shrestha and his staff to conduct the business in a manner which promoted the licensing objectives that were set out in the applications for a review hearing. Mr Carnie also confirmed that a staff training package had been provided to Mr Shrestha and his staff. He felt it was appropriate for there to be refresher training in addition.

Members asked questions of Mr Carnie regarding CCTV and established that it was operational at the time of the incidents. He said it was a good system but staff did not know how to work it properly, which was not an uncommon problem in his experience. He and looked at the footage with Mr Shrestha one day after the second failed test purchase. Members noted there was no condition currently on the licence for the operation of CCTV. Mr Carnie said he sought conditions relevant to the appropriate use of CCTV at the premises.

Mr Carnie said that Mr Shrestha and had problems with staff turnover and with their understanding of English sufficiently. His staff were Nepalese. In response to member questions Mr Carnie said it was open to the sub committee to place a condition on the licence to ensure a personal licence holder was always on the premises during licensing hours.

Evidence of the Designated premises Supervisor

Mr Shrestha said that there were problems with his staff having sufficient command of English and that he felt due to cultural reasons; his staff felt customers were much older than they were. In questioning, he accepted that he had looked at the CCTV footage of a failed test purchase and the staff member had not looked up to see the face of the test purchase customer.

He stated that following the failed test purchase in September, he had introduced a refusals book.

Mr Shrestha said he would accept help from the licensing officer, book staff to go on training courses and would seek to improve the language problems. He also confirmed he had one full time trained personal licence holder working for him for more than one year and another two days a week who had been there about six months. He often worked at the premises alongside other staff and that staffing was adequate.

He accepted Mr Carnie's evidence he was given a staff training package which was Trading Standards' publication prior to the first failed test purchase and the shop was not busy when the test purchases took place.

Mr Shrestha confirmed that his business comprised 50% alcohol sales and the rest groceries. He felt the volume of his business was more at weekends but he was busy from 9am to 11 am, 2pm to 4pm and 6.30 to 8 pm. He said he did not open the premises for the duration of his permitted hours, but he opened the shop from 9am to 8pm each day.

Mr Shrestha said to revoke the premises licence would remove his livelihood because half of his sales were alcohol related.

The Decision

Our legal advisor informed the parties of the broad nature of the advice that had been given to us in the course of our deliberations, including the statutory guidance under section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and on the written and oral evidence presented to us.

She advised that the prevention of crime and disorder objective was engaged in so far as the underage sale was a criminal offence and that the use of alcohol by underage drinkers could lead to crime and disorder. We acted in the interests of the wider community due to the criminality and considerations were at least of deterrence, in accordance with the Bassetlaw High Court decision (2008) and the statutory guidance.

We also received legal advice that our role at the Review was to consider the process as a key protection, to focus upon factual evidence, establish the causes of concern and have regard to action that was appropriate and proportionate for the promotion of the licensing objectives within section 52. We were reminded that in considering any conditions, we should take into account the statutory guidance that applies in all cases (for instance paragraphs 9.43 10.04 of the March 2015 guidance). Also, it is for us to give weight to the licensing objectives in the light of the steps available to us to take.

We considered that it was not for us to consider imposing conditions that the parties agreed which related to licensing objectives that were not in issue in this Review application and in relation to which we had heard no evidence. We therefore declined to consider imposing any such conditions proposed relating to public safety (some of which replicated other relevant legislation) and the prevention of public nuisance. We do not consider it our role in a review to 'tidy up' operating schedules generally and that was not a precedent we wished to set.

We were also reminded by our legal adviser that we were not bound by any agreement between the parties and could impose other sanctions or conditions, or not take any steps if we did not think them appropriate in order to promote the licensing objectives. However we accepted that where a balanced and well thought out agreement was reached by the parties, we should proceed with care.

We were also reminded and considerate of Article 1 ECHR protocol rights with regard to property rights having been granted in respect of the licence. We also took into account any financial impact of measures on this particular business in respect of the alcohol sales as a proportion of this business.

We considered all our options under section 52 of the Licensing Act 2003. We did not think it was an appropriate step to promote the licensing objectives to revoke the licence or to remove the DPS. However we did endorse the Police officer's view regarding the history and seriousness of the offences within a short period and inadequate training despite assistance being given to the DPS, that there should be one 24 hour suspension of the licence which should take place on a Monday over the duration of the licensable hours for that day, to commence on the first week after the 21 day period for the appeal process, as our decision is suspended until such time has passed. We felt the measure should act as a sufficient deterrent taking into account the financial impact on the business and that we acted to promote the licensing objectives for the benefit of the community.

Conditions

We are satisfied it is appropriate and proportionate for the promotion of the licensing objectives to modify conditions, rewording those put forward by the Police as follows:

1. A personal licence holder will always be present at the premises during the hours that the premises are licensed to sell alcohol subject to:

- a) upon the cessation of a person engaged as a member of staff holding a personal licence and working at the premises:
 - i) the Designated Premises Supervisor shall notify the police of that person's departure within 48 hours of that event and

ii) there shall be up to 8 weeks permitted to allow for the process of engaging a replacement member of staff as a qualified personal licence holder to take place and
iii) the police will grant an extension of time for the recruitment of such replacement member of staff as a personal licence holder where there is evidence that a delay in the application process has been caused by circumstances beyond the control of such applicant.

2. Digital CCTV equipment and a sufficient number of cameras as agreed by the Police to be satisfactory shall be installed and maintained at the premises to record colour images that are sufficiently clear to allow the police to use them to investigate any crimes which may be committed on the premises.

3. The CCTV cameras shall cover all areas within the premises which are open to the public.

4. A CCTV camera shall be positioned to obtain images of persons entering the premises by the main entrance.

5. No person other than the police, the licensing authority, the premises licence holder, the manager or any other authorised person shall have access to the CCTV recording equipment or to the recordings made from such equipment.

6. The CCTV equipment shall be in operation and recording whenever the premises are open to the public.

7. Recordings made on the CCTV system shall be retained for a period of at least 28 days. This system shall be in place by no later than 15 February 2016.

8. A minimum of two notices stating that CCTV is in operation shall be displayed throughout the premises where the public have access. The notices shall be of at least A4 size.

9. Any person who appears to look under the age of 25 years shall be challenged and asked for identification to prove that they are over the age of 18 in accordance with the 'Challenge 25' policy.

10. The 'Challenge 25' policy shall be brought to the attention of customers at the point of sale by the display of notices agreed by the police.

11. A Refusals book shall be kept on the premises and a record must be kept of all persons who are refused the sale of alcohol and this book shall be made available on request to the police.

12. All staff working on the premises shall receive training within seven days of commencing work on the premises in accordance with training materials provided by Trading Standards including refresher training every six months for all existing staff relating to the 'Challenge 25' policy which shall be in place at the premises.

APPEAL RIGHTS

If the Applicant or any other person having made a relevant representation is dissatisfied with this decision he or she may appeal against the decision to Guildford Magistrates Court, Mary Road, Guildford, Surrey GU1 4PS within the period of 21 days beginning with the day on which he or she was notified by the licensing authority of the decision appealed against.

Chairman

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**Minutes of a Meeting of the Licensing
Sub Committee held at Council
Chamber, Surrey Heath House on 5
January 2016**

+ Cllr Bill Chapman
+ Cllr Paul Ilnicki

+ Cllr Bruce Mansell

+ Present

- Apologies for absence presented

Substitutes: Cllr Pat Tedder

In Attendance: Cllr Dan Adams

Legal Advisor to Sub Committee

Mrs Laura James

Democratic and Electoral Services
Manager

Mrs Jane Sherman

Surrey Heath Borough Council

Mr Derek Seekings (Senior Licensing
Officer)

as Licensing Authority

Mrs Paula Barnshaw (Licensing
Administration Officer)

Surrey Police

Mr Rab Carnie
T/Inspector Jon Castell

JK Wines & Foods

Mr Ravel Singh Motizada – Designated
Premises Supervisor
Barneet Motizada
Surbir Singh Motizada

Other Party

Mr M Schmitz

22/LS Election of Chairman

RESOLVED that Cllr Bill Chapman be elected as Chairman for this meeting.

23/LS Declarations of Interest

It was noted for the record that Members of the Sub Committee had received emails relating to social media messages regarding the review application. The Sub Committee Members advised that they would make their decision related only to the evidence provided at the hearing.

24/LS Licensing Act 2003 - JK Wines & Foods

The Sub-Committee considered an application for a review of a Premises Licence relating to Jaz and Kiran J K Wines & Foods, 5 High Street, Bagshot.

The Licensing Officer presented his report to the Sub-Committee and notified representatives of the parties who had a right to speak at the meeting. He referred Members to the Licensing Objectives and other relevant licensing legislation. It was noted that the fourth paragraph of section 3 of the Licensing Officer's Report should read *'the Sub Committee must take such of the following steps as it considers appropriate, if any, for the promotion of the licensing objectives...'*

All relevant parties present introduced themselves and stated their reason for attending the Sub-Committee.

The Licensing Officer noted that the application was for the review of the premises licence relating to J K Wines & Foods, 5 High Street, Bagshot.

The Licensing Officer also reported that Surrey Police contended that the carrying on of licensable activities at the premises could seriously undermine the following licensing objectives:

- (i) The prevention of crime and disorder;
- (ii) Protection of children from harm.

Mr Rab Carnie addressed the Committee and stated the following:

- On 9 September 2015 Mr Ravel Singh Motizada, the Designated Premises Supervisor, failed a test purchase when he sold alcohol to an under-eighteen year old girl. Mr Motizada admitted the offence and was given a fixed penalty notice.
- On 19 November 2015, Mr Ravel Singh Motizada, the Designated Premises Supervisor, failed a second test purchase when he sold alcohol to an under-eighteen year old girl. Mr Motizada admitted the offence;
- The customers on both occasions were asked if they were over 18 but no proof of ID was requested;
- Surrey Police felt that there should be a review of the licence because it was a poorly run business, which could have a negative impact on the community;
- It was requested that the licence be revoked or suspended, the Designated Premises Supervisor be removed and conditions updated as set out in the agenda papers.

Mr Motizada and his daughter addressed the Committee and stated the following:

- Mr Motizada explained that he had not intended any harm to children and admitted human error;
- Mr Motizada explained that he worked long hours and closed at 21.00. He had chosen not to open longer as he was worried about selling alcohol late into the night and the impact it would have on the area;
- The Sub Committee was advised that Mr Motizada had one member of staff who worked when he had to visit the cash and carry. Family members helped Mr Motizada at weekends and holidays;
- Mr Motizada advised Members that the member of staff had been fully trained.
- Mr Motizada advised that he was now more vigilant when selling alcohol on his premises;

- Members were advised that the sale of alcohol constituted 30-35% of total sales;
- It was confirmed that CCTV had been in operation;
- Members were advised that the last entry in the refusal book since the second offence had been 2 January 2016. It was started on 20 November 2015;
- Challenge 25 signs had been displayed on the premises prior to the first offence;
- The Sub Committee was advised that revocation or suspension of the licence would have a negative impact on the business. It would also be difficult to find a different person to be a Designated Premises Supervisor as a new application would have to be made;
- Mr Motizada agreed with the Police's recommended conditions;

Mr Schmitz, a resident, addressed the Sub Committee. He stated that he had known Mr Motizada since he took ownership of the shop and it had always been run reliably and responsibly. Mr Motizada had a good rapport with the community and if the licence was revoked the business would be in serious trouble which would be a loss to the community.

The Sub-Committee adjourned from 15.05 until 16.00 for deliberation.

Following deliberations on the application, Mrs James reported on the advice she had given to the Sub-Committee and that Members had taken into account:

- Section 52(3) of the Licensing Act 2003 and the Secretary of State's Guidance under section 182 of the Act and Bassettlaw case.
- The Council's Statement of Licensing Policy; and
- The written and oral evidence presented at the hearing.

The Sub-Committee had heard evidence from the Licensing Officer, Surrey Police and Mr Motizada (and those representing him) and Mr Scmitz.

Members recognised that the recommended sanctions by Surrey Police were put forward in the interests of the wider community as deterrence at least. They were also satisfied with the conditions as sought by Surrey Police as being appropriate for the promotion of the licensing objectives in issue.

The Sub-Committee had concluded that the premises licence should be suspended for two consecutive Mondays during licensable hours after the 21 day deadline for appeal rights. Conditions would be modified as follows:

- An additional condition requiring training in respect of the CCTV to be added to the conditions of the licence;

Regarding the following conditions sought by the Police:

- Condition 2 – remove 'appropriate'
- Condition 4 to be amended to state 'retain for 25 days';
- Delete condition 6;
- The refusals book shall be bound;

- Refuse conditions sought on public safety and public nuisance but retain condition 3 regarding protection of children from harm;
- The sub-committee will provide wording regarding Challenge 25 policy conditions it decided to modify

RESOLVED, that the Premises Licence for J K Wines & Foods, 5 High Street, Bagshot be suspended for two consecutive Mondays during licensing hours after the 21 day deadline for appeal rights, subject to the amended conditions in the operating schedule attached in the Decision Notice at Annex A.

a DECISION NOTICE

Application by Surrey Police for Review of Premises Licence- J K Wines & Foods , 5 High Street, Bagshot, Surrey

This is an application by Surrey Police under section 51 of the Licensing Act 2003 for a review of the premises licence held by Jaz and Kiran Wines Ltd of 5 High Street Bagshot and relating to JK Wines and Foods which is a small off licence store. Relevant representations were received from "any other persons", namely members of the public. No representations were made by any responsible authorities.

At the hearing of the application in attendance were:

Mr D. Seekings (Senior Licensing Officer)
Mrs P. Barnshaw (Licensing Administration Officer)

Mr R. Carnie (Police Licensing Officer)
Temporary Inspector Jon Castell

Mr Ravel Singh Motizada- Designated Premises Supervisor
Ms B Singh Motizada- daughter
Mr S Singh Motizada (nephew)

Mr M Schmitz (other persons)

Mrs L. James- legal advisor to Sub Committee
Mrs J Sherman- Democratic and Electoral Services Manager

Sub- committee members: Cllrs, B Chapman (Chair) P Ilnicki, B Mansell (P. Tedder substitute)

Our legal advisor told those present that there had been some comment on social media and in an email to members regarding the hearing and that the committee was aware that no such representations were to be taken into account in the decision- making process before us.

Mr Seekings presented his Report and confirmed that under paragraph 3, Next Steps, the legislation now provided that the steps the licensing authority may exercise are those it considers to be appropriate for the promotion of the licensing objectives, rather than 'necessary'.

The parties were then invited to present their cases:

Police Evidence before the Sub-Committee and representations

For Surrey Police, Mr Carnie advised there had been two test purchase exercises over a period of less than three months. On both occasions, Mr R S Motizada was working at the premises and had failed to request age identification on both occasions. The test purchasers were females and under eighteen. Mr R S Motizada accepted a fixed penalty for the offence of selling alcohol to an under -age person for the first failed test purchase and was ineligible to receive a second such penalty and instead was reported for the offence.

Mr Carnie asked that the sub- committee took steps including either the suspension or revocation of the premises licence and the removal of the DPS. He regarded the situation as particularly serious because it was the DPS who carried out the sales on both occasions. Mr Carnie also confirmed that there was CCTV at the premises and provided 25 days of coverage which was adequate. He said it was operational on the second test purchase incident, with twelve cameras and is very clear.

Evidence of the Designated premises Supervisor

Mr R S Motizada said he was a family man and would not harm children. He said his failure was to be a trusting person and he very much liked the community, where his business is located and was well known with regular customers. He has committed thousands of pounds to the business and to keep it running he is in debt. He is trying to sell the business as a going concern He believes most customers will buy confectionary or snacks and tobacco products at the same time as alcohol. He thinks 20- 30% of his custom is tobacco related and alcohol 30-35%.

He stated that he had introduced a refusals book on 20 November 2015 the day after the second incident and the last log was for 2 January 2016. He had also installed 'Challenge 25 policy signage before the failed test purchase in September.

He also confirmed he had no one to run the business for him if his licence was suspended or revoked or if he was removed as the DPS. He said customers tend to buy food with alcohol and feared that customers would not buy those items if they could not buy alcohol. There was also the risk he would lose his trade to his competitors, he explained.

The premises are usually open 10am to 9pm and Mr Motizada told us he works long hours. Fridays and Saturdays are busier so he is open longer. He has someone cover for him who works in a local restaurant. She does not hold a personal licence. His adult children help him in holidays and weekends but they now have full time jobs and college places. He lives in Hayes.

Mr Motizada says he would now carry out double identity checks and accepts it was his error in not requesting age identification. His licence already has a condition relating to CCTV being operational and a Challenge 25 policy in place and advertised. He told us he reads the training pack for the policy regularly.

Mr Motizada's daughter spoke for her father as well and confirmed that he had no means of obtaining other staff. She said her father worked hard all of his life and wanted to make the business a success.

Other persons- Mr Schmitz spoke in support of Mr Motizada. He confirmed there was never any trouble at the premises and he had been a regular customer since day one. He said the premises are valued by the community and recognised the hard work put into the business being undermined by being too trusting. He amplified his written representation in saying Mr Motizada would not harm children.

The Decision

Our legal advisor informed the parties of the broad nature of the advice that had been given to us in the course of our deliberations, including the statutory guidance under section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and on the written and oral evidence presented to us.

She advised that the prevention of crime and disorder objective was engaged in so far as underage sales are criminal offence and that the use of alcohol by underage drinkers could lead to crime and disorder. We acted in the interests of the wider community due to the criminality and considerations were at least of deterrence, in accordance with the Bassetlaw High Court decision (2008) and the statutory guidance.

We also received legal advice that our role at the Review was to consider the process as a key protection, to focus upon factual evidence, establish the causes of concern and have regard to

action that was appropriate and proportionate for the promotion of the licensing objectives within section 52. We were reminded that in considering any conditions, we should take into account the statutory guidance that applies in all cases (for instance paragraphs 9.43 10.04 of the March 2015 guidance). Also, it is for us to give weight to the licensing objectives in the light of the steps available to us to take.

We considered that it was not for us to consider imposing conditions that the parties agreed which related to licensing objectives that were not in issue in this Review application and in relation to which we had heard no evidence. We therefore declined to consider imposing any such conditions proposed relating to public safety (some of which replicated other relevant legislation) and the prevention of public nuisance. We do not consider it our role in a review to 'tidy up' operating schedules generally and that was not a precedent we wished to set.

We were reminded and considerate of Article 1 ECHR protocol rights with regard to property rights having been granted in respect of the licence. We also took into account any financial impact of measures on this particular business in respect of the alcohol sales as a proportion of this business.

Although there was no penalty notice regarding the second incident, we are satisfied on the evidence we have seen and heard that there were two failed test purchases and that both were the responsibility of Mr Motizada. We also take into account that Mr Motizada already had a Challenge 25 policy in place as a licence condition. We also heard that the Police needed assistance from a family member to extract CCTV data relating to the test purchase in November.

We accept Mr Motizada's evidence that he was naïve, that he did not fully appreciate the consequences and that he now makes very careful identity/proof of age checks.

We considered all our options under section 52 of the Licensing Act 2003. We did not think it was an appropriate or proportionate step to promote the licensing objectives in issue to revoke the licence or to remove the DPS. However we did endorse the Police officer's view regarding the history and seriousness of the offences within a short period being committed by the same person, that is the DPS, that there should be two days' suspension of the licence which should take place on two consecutive Mondays over the duration of the licensable hours for that day, the first to commence on the first week after the 21 day period for the appeal process, as our decision is suspended until such time has passed. We felt the measure should act as a sufficient deterrent taking into account the financial impact on the business and that we acted to promote the licensing objectives for the benefit of the community.

We have agreed to some of the Police's suggested conditions as we consider that these will promote the licensing objectives going forward.

Conditions

We are satisfied it is appropriate and proportionate for the promotion of the licensing objectives to modify conditions, rewording those put forward by the Police as follows:

1. The conditions put forward by the police in their application under the heading 'General' be applied with the wording 'to the satisfaction of the Police'.
2. Under 'Crime and Disorder' (the prevention of), number 1 is omitted save in so far as the mandatory condition relating to personal licence holders applies. There is no requirement for a personal licence holder to be present for the avoidance of doubt.
3. Delete 'appropriate' to condition 2.
4. In condition 4 the period of retention is 25 days.
5. All staff shall be trained to the satisfaction of the Police in the operation of CCTV including the retrieval of images.

6. Under 'the protection of children from harm', heading condition 3 should remain; numbers 1 and 2 are replicated elsewhere (under 'General' heading).
7. condition 6 is removed as it replicates the mandatory condition.
8. The condition relating to a refusals book is number 8 and it shall be in the form of a bound document, as an addition to the suggested condition put forward by the Police at '1'.
9. The requested conditions under the heading 'public safety' in the application are not granted, nor the condition under the heading of public nuisance.

We ask the Licensing Officer to draw up these conditions, incorporating the above.

APPEAL RIGHTS

If the Applicant or any other person having made a relevant representation is dissatisfied with this decision he or she may appeal against the decision to Guildford Magistrates Court, Mary Road, Guildford, Surrey GU1 4PS within the period of 21 days beginning with the day on which he or she was notified by the licensing authority of the decision appealed against.

Chairman

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