



Licensing Sub-Committee

05 August 2019

Subject Application for the Grant of a Premises Licence

Report by:	Ian Knowles Head of Paid Service
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Purpose / Summary:	This report is being put before the Members of the Licensing Sub-Committee for them to determine the outcome, due to the application being subject to a representation being made.

RECOMMENDATION(S): That Members take into account all the information put before them within this report along with all the information presented to them from all parties in attendance at the day(s) of the hearing.
Members will then need to decide which of the options presented to them within section 7 of this report in order to determine this application, taking into account:
Licensing Act 2003
S/182 Statutory Guidance
WLDC Policy

IMPLICATIONS

Legal: The Licensing Act 2003, Schedule 5, Part 1 makes provision for the applicant for the premises licence and the person who has submitted a relevant representation to appeal the outcome of the determination of the Hearing.

Any appeal must be made to the Magistrates Court for the petty sessions area, in which the premises concerned are situated.

Any appeal must be commenced within 21 days beginning with the day on which the appellant was notified by the authority of the decision appealed against.

Financial : N/A

Staffing : N/A

Equality and Diversity including Human Rights :

Article 6 – Right to a fair Hearing in public before an independent and impartial tribunal.

Data Protection Implications: Personal Data within the report appendices has been redacted where relevant.

Climate Related Risks and Opportunities: N/A

Section 17 Crime and Disorder Considerations:

(S.17 Crime and Disorder Act 1998) - (1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Health Implications: N/A

Title and Location of any Background Papers used in the preparation of this report :

Licensing Act 2003 S/182 Statutory Guidance WLDC Policy

Risk Assessment :

See the Legal section above in relation to Appeals.

WEST LINDSEY DISTRICT COUNCIL

LICENSING ACT 2003

Reference Number: N/A

Application type: Application for the Grant of Premises Licence

Premises: "Morton Premier" 1 Crooked Billet Street, Morton,
Lincolnshire DN21 3AG

Applicants: Mr Satnam Singh and Mrs Mandeep Kaur

Date of Hearing: 05 August 2019

A Hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the Representations, Application or Notice as the case may require.

- 1.1 The application is for the grant of a new Premises Licence for the above named premises, made under Section 17 of the Licensing Act 2003. The statutory consultation period relative to this application ended on 09 July 2019.
- 1.2 The applicant placed a Notice in the local press and attached a Blue Notice at the premises, in order to advertise the application.
- 1.3 The application submitted is requesting authorisation for the supply of alcohol (for consumption off the premises only). The full application with all the relevant details is attached as Appendix 1.

2 Background

- 2.1 This premises was originally a public house and issued a licence in November 2005 under the current licensing regime (Licensing Act 2003). This was surrendered in March 2018 when the premises closed. It is now looking to re-open as an off-licence, convenience store.

3 Promotion of the Licensing Objectives

- 3.1 In submitting the application the applicant is required to describe any steps intended to be taken in order to promote the following 4 licensing objectives, which are:
 - The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance
 - The Protection of Children from Harm

- 3.2 The steps the applicant intends to take are detailed in the attachment supplied with the application form (Appendix 1).

4 Representations – Responsible Authorities

- 4.1 One representation has been received from West Lindsey District Council Environmental Protection Team, which is attached at Appendix 2 for Members' perusal. The Environmental Protection Team have indicated that their representation is in relation to one of the four licensing objectives, e.g. Public Safety.

5 Representations – Other Persons (previously known as Interested Parties)

- 5.1 None.

6 Considerations

- 6.1 Each application must be considered on its own merits, **standardised conditions cannot be applied across the board** to all licences of a similar type.
- 6.2 Each representation must be considered and in each case the Members of the sub-committee must satisfy themselves whether or not the licensing objectives are being promoted by the applicant with respect to each matter.
- 6.3 The authority may only interfere with the operating schedule if it considers it appropriate in order to promote the licensing objectives. If it does interfere, then it must do so proportionately.
- 6.3.1 Therefore, before any conditions can be imposed on a licence, they have to be *appropriate for the promotion of the licensing objectives and where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives*. Conditions must be *proportionate, reasonable, and* capable of being directly complied with by the licensee. Furthermore, conditions should be clear and understandable, not be imposed to achieve an ulterior motive outside the scope of the legislation, not over generalised and cannot override primary legislation. If the Sub-Committee are minded that a condition is not appropriate for the promotion of the licensing objectives, then it should not be imposed.
- 6.3.2 The Sub-Committee should always be alive to the burdens/costs of additional conditions and if a lesser step can be taken, it should be.
- 6.3.3 Clearly, the Sub-Committee have to *consider extremely carefully* whether or not additional conditions need to be attached in order for the promotion of the licensing objectives?

6.4 In making its decision the committee must consider the application in line with the following:

- The Licensing Act 2003
- The Section 182 Guidance made under the Act
- The Licensing Authority's Licensing Policy Statement

6.5 Policy Considerations

6.5.1 When considering the application and representation received, attention is drawn to the Licensing Authority's Policy which can be found at the link below by clicking on the Download Tab, then downloading the Policy:
<http://www.west-lindsey.gov.uk/businesses/licensing/licensing-and-gambling-policies/licensing-policy/104810.article>

6.6 Statutory Guidance

6.6.1 Attention is also drawn to the contents of the section 182 statutory guidance which can be found at the link below:
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

7 Options

7.1 Licensing Act 18(2) Subject to subsection (3) below, the authority must grant the licence in accordance with the application subject only to-

- (a) such conditions as are consistent with the operating schedule accompanying the application, and
- (b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the licensing authority must –

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
- (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are –

- (a) to grant the licence subject to-
 - (i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and
 - (ii) any condition which must under section 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application;

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

Conditions cannot be attached with respect to any part of the application on which no representation(s) have been received.

This is a matter for the committee to determine in light of the above matters and any others it considers relevant.

N.B. Whatever decision the Members of the Licensing Sub-Committee arrive at, they are reminded about the comments made in a court case, known as Hope and Glory, in relation to reasons for their decision making. The comments noted from this case stated: “*The fuller and clearer the reasons, the more force they are likely to carry*”. Therefore taking these comments into account, Members are strongly advised to give good, clear, justifiable reasons in relation to their decision, which will have more chance of being upheld, should the decision be appealed against.

8 List of Appendices

Appendix 1	Application Form		
Appendix 2	Representation	from	Environmental
Protection			

9 Background Papers

Licensing Act 2003
WLDC Statement of Licensing Policy
Guidance made under section 182 of the Licensing Act 2003