

# WEST LINDSEY DISTRICT COUNCIL

## LICENSING ACT 2003

<b>Reference Number:</b>	TBC
<b>Application type:</b>	Application for the Grant of Premises Licence
<b>Premises:</b>	“Sudbrooke Village Store” 1-2 Holme Drive, Sudbrooke, Lincolnshire LN2 2SF
<b>Applicant:</b>	Mr Arvindkumar Rambhai Bhutiya
<b>Date of Hearing:</b>	January 25 2018

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 01.01.2018.
- 1.2 The applicant placed a Notice in the local press and attached a Blue Notice on to the glass door of the property, in order to advertise the application.
- 1.3 The application submitted is requesting authorisation for the retail sale 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 issued a licence in August 2005 under the current licensing regime (Licensing Act 2003) but was also licensed under the previous licensing regime. The licence was transferred in 2010 and then again in 2011 where the licensee then surrendered the licence in 2016.

## 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 section 18 of the application form (Appendix 1).

#### **4 Representations – Responsible Authorities**

- 4.1 One representation has been received from Lincolnshire Police, which is attached at Appendix 2 for Members perusal. Although not objecting to the application in principle, the view from Lincolnshire Police is that the conditions submitted as part of the application are inadequate and do not fully promote the Licensing Objectives. Lincolnshire Police have indicated that their representation is relative to all four of the licensing objectives.

#### **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 representations 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 Lincolnshire Police

## **9 Background Papers**

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