

**LICENSING ACT 2003 - APPLICATION FOR REVIEW OF A
PREMISES LICENCE - EPSOM CONVENIENCE STORE, 8 EAST
STREET, EPSOM**

Head of Service:	Rod Brown, Head of Housing & Community
Wards affected:	Town Ward
Appendices (attached):	Restricted Appendix 1: Application for the Review of a Premises Licence submitted by Surrey Police with supporting submission and evidence. Restricted Appendix 2: Representation from Surrey Social Services Appendix 3: Premises Licence Appendix 4: Floor Plan

Summary

The Sub-Committee is asked to consider the Review of the Premises Licence for Epsom Convenience Store, 8 East Street Epsom under the Licensing Act 2003.

Recommendation (s)

The Sub Committee is asked to:

- (1) consider the Review of the Premises Licence for Epsom Convenience Store, 8 East Street Epsom under the Licensing Act 2003.**

1 Reason for Recommendation

- 1.1 To determine the application for a Review brought by Surrey Police.

2 Background

- 2.1 The supply of alcohol, provision of regulated entertainment, and sale of late night refreshment are licensable activities under the Licensing Act 2003. Authorisation from the Council, in its role as the licensing authority, is required in order to carry on any of these activities at premises within the borough.

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- 2.2 Under the scheme of delegation adopted by the Council, the Licensing (Hearing) Sub-Committee (“the Sub-Committee”) is responsible for the exercise of many of the functions of the licensing authority, including determination of applications where representations have been received.

General principles to be followed when determining review applications

- 2.3 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 2.4 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 2.5 When considering applications, the licensing authority is required to carry out its functions with a view promoting the licensing objectives, which are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 2.6 The Licensing Authority must also have regard to its Statement of Licensing Policy, and to the statutory guidance issued by the Home Office under section 182 of the Act. Chapter 11 of the Section 182 guidance specifically deals with Reviews.

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- 2.7 The Sub-Committee must ensure that all licensing decisions have a direct relationship to the promotion of one or more of the licensing objectives. Every application should be considered on its merits, and there must not be a 'blanket policy' to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded. Applications must be considered with regard to the principles of fair process and the Human Rights Act.
- 2.8 The Statutory Guidance highlight that only precise, necessary and proportionate conditions, which promote one or more of the licensing objectives, should be attached to the licence or certificate. The Sub-Committee should only impose such conditions as are appropriate to promote the licensing objectives arising out of the consideration of the representations received and should avoid straying into undisputed areas. Conditions duplicating other statutory provisions are not considered to be appropriate.
- 2.9 It is considered inappropriate for officers involved in the administration of applications to make recommendations. However officers from the Responsible Authorities may request conditions be imposed on a licence and make recommendations with regard to the licensing objectives.
- 2.10 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 2.11 Parties to a hearing, including the applicant and persons who made relevant representations, may have rights of appeal against any decision made by the Sub-Committee, dependent upon the nature of the decision. Appeals may be instituted by way of written notice to a Magistrates Court, within 21 days of being notified of the decision.

Options available to the Sub Committee

- 2.12 The Licensing Authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a Licensing Authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

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- 2.13 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 2.14 Where the Licensing Authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- a. modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - b. exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - c. remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - d. suspend the licence for a period not exceeding three months;
 - e. revoke the licence.
 - f. Take no action

3 Details of Application

- 3.1 On 25 September 2020, an application for Review of the Premises Licence was submitted by Surrey Police on the grounds of the prevention of public nuisance, public safety and the protection of children from harm. The application and supporting submission and evidence, is attached as Appendix 1.
- 3.2 A copy of the current premises licence and floor plan are attached at Appendix 3 and 4 respectively.
- 3.3 The premises are currently licensed for the sale of alcohol from 6:00 until 23:00 Monday to Sunday.
- 3.4 The Licence has been in operation since March 2010.

4 Representations from Interested Parties

- 4.1 None received.

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5 Representations from Responsible Authorities

5.1 Surrey Social Services, Child Employment Team as Responsible Authority are in support of the Review. Their representation is attached as Appendix 2.

5.2 No other responses have been received.

6 Policy Considerations

6.1 A copy of the Council's Statement of Licensing Policy has been provided to all parties.

7 Risk Assessment

Legal or other duties

7.1 Impact Assessment

7.1.1 Decisions on licensing matters engage issues of human rights, in particular, Article 6, the right to a fair hearing. However, the interference with Convention Rights is permitted where lawful and necessary in the interests of public safety, the prevention of disorder and crime, the protection of health and morals or for the protection of the rights and freedoms, and Article 8, respect for protection of the rights and freedoms of others.

7.2 Crime & Disorder

7.2.1 None for the purposes of this report.

7.3 Safeguarding

7.3.1 None for the purposes of this report.

Dependencies

7.4 None for the purposes of this report.

Other

7.5 None for the purposes of this report.

8 Financial Implications

8.1 None for the purposes of this report.

8.2 **Section 151 Officer's comments:** None for the purposes of this report.

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9 Legal Implications

- 9.1 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 9.2 The Licensing Authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 9.3 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the steps referred to above. In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 9.4 **Monitoring Officer's comments:** None arising from the contents of this report.

10 Policies, Plans & Partnerships:

- 10.1 **Council's Key Priorities:** Not relevant for the purposes of this report.
- 10.2 **Service Plans:** Not relevant for the purposes of this report.
- 10.3 **Climate & Environmental Impact of recommendations:** None for the purposes of this report.
- 10.4 **Sustainability Policy & Community Safety Implications:** None for the purposes of this report.
- 10.5 **Partnerships:** None for the purposes of this report.

11 Background papers

- 11.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

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- Council's Statement of Licensing Policy, dated 11 December 2018
- Licensing Act 2003
- Revised Guidance issues under section 182 of the Licensing Act 2003 (updated April 2018)
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>