

Subject: Determination Hearing – Moore’s
Mini Market, 365 Rochdale Road,
Britannia, Bacup, OL15 0TH

Status: For Publication

Report to: Licensing Committee

Date: 14th April 2010

Report of: Licensing Manager

1. PURPOSE OF REPORT

- 1.1 To advise members of an application to review a premises licence under section 51 of the Licensing Act 2003.
- 1.2 To request that members determine the application in accordance with the provisions of the Licensing Act 2003.

2. THE LICENSING OBJECTIVES

- 2.1 Members are reminded of the licensing objectives as follows:
 - a. The prevention of crime and disorder
 - b. Public Safety
 - c. The prevention of public nuisance
 - d. The protection of children from harm

3. THE APPLICATION

- 3.1 The application is one to review a premises licence held under the Licensing Act 2003 and is appended at **Appendix A**.
- 3.2 The application to review was made by the Chief Officer of Police and was received by the licensing authority on 18th February 2010.
- 3.3 The application to review the premises licence relates to the protection of children from harm licensing objective.
- 3.4 The application to review states the grounds for review as:

“This review is instigated as a result of three Police Test Purchase Operations conducted at the premises over the last fifteen month period these being on the dates of Sunday 26th October 2008, Friday, 21st August 2009 and Friday, 22nd January 2010.

During the course of these three test purchase operations, staff at the store sold alcohol to a child under the age of 18, this being contrary to Section 146 of the Licensing Act 2003.

Alcohol harm misuse amongst children has become such a problem that it is now subject of a Government Youth Alcohol Action Plan aimed at protecting children from harm by enforcement and education. The availability of alcohol to children from these premises seriously undermines this action plan and further undermines the protection of children from harm licensing objective.

The availability of alcohol to children has a recognized and widely reported knock on effect which leads to increased anti social behavior and public nuisance within communities. Whilst there is little reported anti social behavior in the immediate vicinity of the premises, the availability of alcohol from these premises may clearly contribute to that nuisance and disorder.”

4. BACKGROUND

- 4.1 The premises licence was originally granted on 20th February 2009.
- 4.2 The current licence holder is Moore Property Investment Ltd, who has held this licence since 20th February 2009.
- 4.3 A copy of the current premises licence is appended at **Appendix B**.
- 4.4 The premises licence has not previously been subject to a review.
- 4.5 The premises had previously been subject to a premises licence. This licence was originally granted on 8th August 2005 and was held by Susan and Timothy Walmsley. The licence was surrendered on 3rd December 2008.
- 4.5 The notice of hearing was served upon the responsible authority and the licence holder.
- 4.6 The Chief Officer of Police has not yet returned the regulation 8 notice stating whether they intend to attend the hearing (at the time of publication).
- 4.7 The licence holder has not yet returned the regulation 8 notice stating whether they intend to attend the hearing (at the time of publication).
- 4.8 The Chief Officer of Police has submitted supporting documentation in respect of the application to review the premises licence. The witness statement of PC Walker is appended at **Appendix C**.
- 4.9 The Chief Officer of Police has also submitted a witness statement of the test purchaser. This is appended at **Appendix D**.
- 4.10 The Chief Officer of Police has also submitted a Department for Culture, Media and Sport document titled ‘Problem premises on probation’. This is appended at **Appendix E**.

4.11 The Chief Officer of Police has submitted their list of proposed licence conditions. This is appended at **Appendix F**.

5. RELEVANT REPRESENTATIONS

5.1 There have been no representations from the other responsible authorities.

6. INTERESTED PARTIES

6.1 There have been no representations from interested parties.

7. ASSOCIATED PAPERS

7.1 There are no associated papers for this report.

8. POLICY CONSIDERATIONS

8.1 The relevant extracts from the Statement of Licensing Policy made from 7th January 2008 to 6th January 2011 are detailed below and are numbered as they appear in the Statement of Licensing Policy document.

2. LICENSING OBJECTIVES

- *the prevention of crime and disorder*
- *public safety*
- *the prevention of public nuisance; and*
- *the protection of children from harm*

2.1 *The licensing objectives are of equal importance and are the only matters which may be taken into account by the licensing authority.*

2.2 *In executing our functions, we will consider the Licensing Act against a backcloth of other legislation, which may impact on the promotion of the licensing objectives.*

This will include the,

- *Crime and Disorder Act 1998 as amended by the Police Reform Act 2002*
 - *Human Rights Act 1998*
 - *Health & Safety at Work Act 1974*
 - *Environmental Protection Act 1990*
 - *Anti-Social Behaviour Act 2003*
 - *Race Relations Act 1976*
 - *Race Relations (Amendment) Act 2000*

2.3 *We desire to create an environment where local people and visitors to our areas will have better opportunities to enjoy their leisure time in safety without fear of violence, intimidation or disorder whilst on or in the vicinity of licensed premises.*

- 2.9 *The Guidance requires that a Licensing Authority considers such applications from a neutral standpoint. If relevant representations are made, for example by local residents or the Police, they will be considered fairly. Those making representations genuinely aggrieved by a positive decision in favour of the Local Authority will generally be entitled to appeal to the Magistrates' Court and thereby receive an independent review of any decision.*
- 2.10 *We will endeavor to carry out our licensing functions in a way that*
- *ensures public safety*
 - *supports well managed premises where licence holders actively promote the licensing objectives and display sensitivity to the potential impact of licensable activities on local residents and other businesses*
 - *protects residents' quality of life*
- 2.11 *We will have regard of how littering and fouling, noise, street crime and the capacity of the Council's infrastructure, resources and police resources impact on the licensing objectives.*
- 2.12 *We will discharge our functions with integrity and objectivity. We will work in partnership with the leisure industry, responsible authorities, residents and local businesses to promote the licensing objectives.*
- 2.14 *We will seek to give protection to local residents, whose lives can be blighted by disturbance and antisocial activity associated with the behaviour of some people visiting places of entertainment.*
- 2.15 *We desire to strike a balance between allowing people to enjoy their leisure, at the times and in the manner they wish to, and ensuring the licensing objectives are not undermined.*
- 2.16 *Licensing is about regulating licensable activities on licensed premises, in qualifying clubs and at temporary events within the definitions of the Act, and the conditions attached to the various authorisations will be focused on matters which are in the control of applicants and licence holders. Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises. Licensing law will however be a key aspect of a holistic approach to the management of the evening and night time economy in town centres.*
- 2.17 *We will therefore focus upon the direct impact of the activities taking place at or in the vicinity of licensed premises on members of the public living, working or engaged in normal activities in the vicinity of those places.*

3. LICENSABLE ACTIVITY

- 3.1 *This policy relates to licensable activities. They are:*
- *The sale of alcohol by retail anywhere*

- *The supply of alcohol by or on behalf of a club to members of the club and their bona fide guests*
- *The provision of regulated entertainment, namely,*
 - *The performance of a play*
 - *The exhibition of a film*
 - *An indoor sporting event*
 - *boxing or wrestling entertainment outdoors*
 - *The performance of live music*
 - *The playing of recorded music (excluding incidental background music)*
 - *The performance of dance*
 - *Entertainment of a similar description to live music, recorded music or dance*

where the entertainment takes place in the presence of the public or a section of the public.

- *The provision of hot food or hot drink at any time between 11 pm and 5 am for consumption on or off the premises.*

3.3 *The provision of hot food or hot drink may take place at any time, but we will only be able to regulate such activity between 11pm and 5am. The provision outside these times is not licensable activity under the Act.*

3.4 *We will promote the 4 licensing objectives, namely*

- *the prevention of **crime and disorder***
- ***public safety***
- *the prevention of **public nuisance**; and*
- *the **protection of children** from harm,*

and all our decisions will reflect these objectives.

3.5 *We consider each licensing objective to be of equal importance. They will be considered in relation to matters centered on the premises or within the control of the licensee. We will objectively consider the direct effect that the carrying on of the licensable activities has in the vicinity of the premises.*

3.6 *Licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee or vicinity of licensed premises.*

3.7 *We will not deter an individual making an application and having that application judged on its individual merits.*

3.8 *We will not deter any person from making representations in respect of any application or seeking a review of a license.*

- 3.10 *We will also seek to discharge our responsibilities by linking to Government and Council strategies and policies so far as they impact on the licensing objectives.*
- 3.11 *We will in particular reflect upon;*
- *The Crime and Disorder Reduction Strategy*
 - *Existing Enforcement Concordats*
 - *The National Alcohol Harm Reduction Strategy*
 - *Safer Clubbing*
 - *The designated premises supervisor's ability to control and supervise customer behavior.*
 - *The number of people attending the premises*
 - *The customer age profile*
 - *The nature of drinks promotions*
 - *The nature of licensable and other activities provided*
 - *Any evidence of drug or/and alcohol abuse*
 - *The design, character and layout of the premises*
- 3.14 *The licensing authority will integrate licensing policy with crime reduction, crime and disorder, planning, transport, tourism, cultural strategies and the Public Health North West Alcohol Strategy Group by open dialogue. The Licensing Committee will receive reports from and deliver reports to the relevant bodies.*
- 3.15 *Any conditions attached to premises licenses and club premises certificates will reflect the Licensing Objectives and where appropriate, local crime prevention strategies*
- 3.17 *We will take account of other objectives such as the Community Health Action Plans and the Violent Crime Reduction Policies and action plans under our Crime and Disorder partnership.*
- 3.18 *We are committed to avoid duplication with other regulators and will not impose conditions upon licenses which are already requirements under other legislation*
- 6.1 *The operational regulatory functions of the Planning, Environmental Health and Licensing functions of the Council will be separated to avoid duplication, inefficiency and theoretical conflicts of interest which may be open to legal challenge. We will not allow licensing applications to be a re-run of planning applications.*
- 7.5 *The hours requested by the applicant will normally be approved where the applicant can show in their operating schedule that the proposal would not adversely affect the environmental quality, residential amenity and character of any particular area or undermine one or more of the licensing objectives.*
- 7.6 *Where there is evidence that one or more licensing objectives would be undermined, a responsible authority, authorised person or interested party has the ability to object to the issue or variation of a licence or request a review of an existing licence.*

- 7.7 *The onus to provide the evidence will always be on the person or organisation making the objection or review application. This burden of proof will not however apply should there be a special saturation policy in being in relation to the area where the premises are situated.*
- 7.8 *Where individual premises are a focus for disorder and disturbance then, subject to representations, limitations may be appropriate. Where late hours are requested, particularly involving entertainment, the imposition of further conditions may be appropriate.*
- 7.12 *We ask applicants to note that in the case of the sale by retail of alcohol (or supply of alcohol by or on behalf of a club to, or to the order of, a member of a club) for consumption on the premises, “consumption” of alcohol is not a licensable activity.*
- 9.1 *We will, as far as it is possible to do so, avoid imposing disproportionate and over burdensome conditions on premises. We will not impose standard conditions on premises licences other than mandatory conditions prescribed by the Act. We will adopt a position of reasonableness and proportionality.*
- 9.2 *Following proven objections or reviews, we will consider imposing realistic conditions appropriate to the circumstances of each individual case. We will consider model conditions of best practice and we will also consider other conditions proposed by responsible authorities in any particular case.*
- 9.4.1 *We will however reserve the right to impose any condition which is necessary to promote any of the licensing objectives where an objection to or application for a review of a licence is made.*
- 14.1 *Where an application for a review of a premises licence is made, we will inform the public of the application for review in accordance with the regulations made under the Act thereby allowing any other responsible authority, authorised person or interested party to also make application at that time.*
- 8.2 The relevant extracts from the Guidance issued under section 182 of the Licensing Act 2003 are detailed below and are numbered as they appear in the Guidance document.
- 11.1 *The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.*
- 11.2 *At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.*
- 11.5 *Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in*

precisely the same way that they would treat representations made by any other body or individual

- 11.6 *In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.*
- 11.7 *Representations must be 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.*
- 11.8 *It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.*
- 11.15 *The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.*
- 11.16 *The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote 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 warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like 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 concerns, licensing authorities should not merely repeat that approach.*

11.17 *Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:*

- *to 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;*
- *to 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);*
- *to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *to suspend the licence for a period not exceeding three months;*
- *to revoke the licence.*

11.18 *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 which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.*

11.19 *For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.*

11.20 *Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.*

11.21 *Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.*

9. THE DECISION

- 9.1 In accordance with Regulation 26(2) of the Licensing Act 2003 (Hearings) Regulations 2005, a decision must be made within the period of 5 working days beginning with the day or the last day on which the hearing was held.
- 9.2 In accordance with section 52(4) of the Licensing Act 2003, members may take such steps (if any) as mentioned below as it considers necessary for the promotion of the licensing objectives. The steps the members may take are:
- a) to modify the conditions of the licence;
 - b) to exclude a licensable activity from the scope of the licence;
 - c) to remove the designated premises supervisor;
 - d) to suspend the licence for a period not exceeding three months;
 - e) to revoke the licence;

For this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

10. CRIME & DISORDER

- 10.1 Without prejudice to any other obligation imposed on it, the Local Authority has a duty to consider crime and disorder implications.

11. WARDS AFFECTED

- 11.1 The premises are situated within the Irwell ward and no other ward is likely to be affected. The Ward Councillor(s) are not members of the Sub-Committee.

Background Papers	
Document	Place of Inspection
Statement of Licensing Policy	Council Offices or via www.rossendale.gov.uk

Appendices	
Document	Appendix Number
Application to review a premises licence	A
Copy of the current licence	B
Witness Statement of PC Walker	C
Witness Statement of the test purchaser	D
DCMS document titled "Problem Premises on Probation".	E
List of proposed conditions as proposed by the Chief Officer of Police	F