

Name of meeting: Licensing Panel

Date: Wednesday 3rd July 2019, at 10.30am – The Old Court Room, Huddersfield Town Hall, Ramsden Street, Huddersfield

Title of report: Application for Review Hearing under S51 Licensing Act 2003: Cyrus Supermarket, 205 Lockwood Road, Huddersfield HD1 3TG

Purpose of report: To determine the application

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	Not applicable
Date signed off by <u>Strategic Director</u> & name	Russell Williams – Group Leader Licensing (as agreed by Karl Battersby – Strategic Director – Economy and Infrastructure)
Is it also signed off by the Service Director (Finance)?	Not applicable
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Not applicable
Cabinet member portfolio	Cllr Rob Walker

Electoral wards affected: Newsome

Ward councillors consulted: Not Applicable

Public or private: Public

GDPR Implications: GDPR has been considered and appropriate sections of the report have been amended

1 Summary

- 1.1 On 16 May 2019, West Yorkshire Police made an application for the review of the premises licence at Cyrus Supermarket, 205 Lockwood Road, Huddersfield HD1 3TG under Section 51 of the Licensing Act 2003. The applicant believes that the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and public safety are not being achieved at the premises.
- 1.2 Full details of the grounds for the review are contained in the attached review application at **Appendix A**.

2 Information required to take a decision

2.1 Background

- 2.1.1 On 5th April 2019 a test purchase was carried out by a Kirklees Licensing Officer. A sale of alcohol took place at 21:05. The licence ceases at 20:30. The shop was not made aware of this failure at the time of the offence due to scheduled partnership visits that were to take place.
- 2.1.2 On 18th April 2019, a visit was made to Cyrus Supermarket as part of a partnership operation to investigate criminal activities linked to licensed premises in the Huddersfield area. At this visit, a Trading Standards member of staff was sold 20 Richmond cigarettes for £4.00 by the member of staff working behind the counter. The police attended the premise with Trading Standards following the purchase. The designated premises supervisor was present and an attending Officer asserted that he spoke little English and knew nothing of running a shop.
- 2.1.3 A search of the premises revealed a large number of non-duty paid cigarettes hidden between drinks cans in the storeroom behind the counter.
- 2.1.4 A car key fob was also found in the waste bin behind the counter and a search of the vehicle revealed a further large amount of non-duty paid cigarettes. The vehicle owner was inside the shop and had keys for the shop in his possession.
- 2.1.5 A statement from the Trading Standards Officer is appended to this report at **Appendix B**.
- 2.1.6 Pharmacy type products were also found on sale at the premises which did not have any English writing on the outer box and which were believed to be medicinal product that can only be sold by a registered pharmacy. These were seized and sent to MHRA (Medicines and Healthcare Products Regulatory Agency) in London for assessment, as foreign livery medication cannot be sold in the UK.
- 2.1.7 A copy of the response letter from the MHRA is attached at **Appendix C**.
- 2.1.8 On 9th May 2019 a further partnership visit took place. Police Officers attended and spoke to the man now known to be the named designated premises supervisor. They found his English was poor and he could not understand requests for training records, for the first aid box, to operate the CCTV or to discuss the 'Challenge 25' policy. He showed Officers a phone number for the person he stated owned the premises, and when

asked who the designated premises supervisor was at the premises, stated he did not know.

2.1.9 On this visit, Officers found a total of 71 packets of non-duty paid cigarettes in three separate locations. They also found a clear money bag containing 3 small bags of cannabis in a red documents folder in a storage room.

2.1.10 Additionally, 49 blue tablets were found in the drawers underneath the till. West Yorkshire Police believed these to be a type of erectile dysfunction tablet, which can only legally be sold in pharmacies after the pharmacist has determined the appropriateness of the treatment for the patient.

2.1.11 Full details of the review application can be found at **Appendix A**.

2.1.12 The current premises licence was first issued on 12 April 2011, under premises licence number PR(A)1321; a copy of the premises licence is attached at **Appendix D**.

2.2 Licensing Policy

Members considering the application should take note of the Authority's Statement of Licensing Policy, which provides the following guidance on how Members should approach the application and representation:

1.0 – Executive Summary

1.2 In exercising its duties and responsibilities under the terms of the Licensing Act 2003, the Council will operate within the statements and procedures mentioned in this policy statement. Notwithstanding this statement, all applications will be treated on their merits and judged accordingly. The council will have regard to any relevant guidance issued by the Secretary of State in exercising its powers under the Act.

2.0 – Purpose and Scope of the Licensing Policy

2.7 The Licensing Authority recognises that each licence application must be considered on its own individual merits in the context of the four licensing objectives, and that unless relevant representations are received from responsible authority's or interested parties, there is no provision for a Licensing Authority to impose conditions on a licence other than those proposed within an application. Only conditions which have been volunteered by the applicant or which have been determined at a Licensing Panel hearing can be attached to a licence or certificate. If no relevant representations are made in respect of an application, the Licensing Authority is obliged to issue the licence on the terms sought.

Licensing Objectives.

1. *Public Safety*
2. *Prevention of crime & disorder*
3. *Prevention of public nuisance*
4. *Protection of children from harm*

2.3 Secretary of State Guidance

Members also need to consider statutory guidance issued, by the Secretary of State, under Section 182 of the Licensing Act 2003. As the representations relate to all four licensing objectives, Members attention is drawn to Section 2 of this Guidance, the relevant parts of which may be found at **Appendix E**.

3 **Implications for the Council**

3.1 **Working with People**

Residents of Kirklees need to be confident that persons holding licences under the Licensing Act 2003 are in a position to uphold the 4 licensing objectives. Taking appropriate and necessary action against licence holders where they fall short of their duties under the Licensing Act 2003 will prevent harm to residents

3.2 **Working with Partners**

The Council's licensing team work closely with partnering agencies, classed as 'Responsible Authorities' under the Licensing Act 2003, these include Planning, West Yorkshire Police, Trading Standards, Environmental Health, Fire Service, and Safe Guarding Children team.

3.3 **Place Based Working**

Working closely with Responsible Authorities the Licensing Authority can address issues within the districts that make up Kirklees.

3.4 **Improving outcomes for children**

A key objective of the Licensing Act is the protection of children from harm, and any decision made by the Council, in its capacity as Licensing Authority, have to have regard to this objective.

3.5 **Other (e.g. Legal/Financial or Human Resources)**

In determining the application Members should have regard to the Authority's licensing policy statement and the Secretary of State's Guidance. The applicant or any other person who made relevant representations in relation to the application have a right of appeal to the Magistrates' court.

4 **Consultees and their opinions**

Consultation has taken place in accordance with the Act. There have been no matters arising from responsible authorities.

5 Next steps and timelines

5.1 When determining the review application Members, having had regard to the information in the application, may take any of the following steps as they consider appropriate:

- 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.

5.2 Findings on any issues of fact should be on the balance of probability.

5.3 In arriving at a decision Members must have regard to the relevant provisions of statutory guidance and the licensing policy statement and reasons must be given for any departure.

5.4 The decision should be based on the individual merits of the application.

6 Officer recommendations and reasons

6.1 Members of the Panel are requested to determine the application

7 Cabinet portfolio holder's recommendations

Not applicable

8 Contact officer

Beth Jennings, Licensing Officer, Licensing Service
Tel: 01484 221000 ext. 71609
Email: beth.jennings@kirklees.gov.uk

9 Background Papers and History of Decisions

9.1 Appendix A – Review Application from West Yorkshire Police

9.2 Appendix B – Statement from Trading Standards Officer

9.3 Appendix C – Letter from Medicines and Healthcare Products Regulatory Agency
MHRA

9.4 Appendix D – Copy of Premises Licence PR(A)1321

9.5 Appendix E – Relevant sections of Secretary of State Guidance

10 Strategic Director responsible

Karl Battersby – Strategic Director Economy and Infrastructure

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