

Name of meeting: Licensing Panel

Date: Wednesday 4th September 2019, at 10:50am – Huddersfield Town Hall, Ramsden Street, Huddersfield

Title of report: Application for Review Hearing under S51 Licensing Act 2003 – Long Lane Convenience Store, 50B Long Lane, Dalton, Huddersfield, HD5 9HL

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 <u>Council's Forward Plan (key decisions and private reports?)</u>	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 <u>portfolio</u>	Cllr Rob Walker

Electoral wards affected: Dalton

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 24th July 2019, West Yorkshire Police made an application for the review of the premises licence under Section 51(1) of the Licensing Act 2003. The applicant believes that the Licensing objectives of the prevention of crime and disorder 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

Background

- 2.1 On the 11th July 2019 a multi-agency visit took place at Long Lane Convenience Store, where non-duty paid cigarettes and tobacco totalling over £11,000 were found on the premises. Furthermore, a breach of licensing conditions appeared evident at the premises. A copy of the review application is attached at **appendix A**.
- 2.2 The current premises licence was first issued on the 31st December 2011, under premises licence number PR(A)1377. A copy of the premises licence is attached at **appendix B**.

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

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 review relates to prevention of crime and disorder and public safety, Members attention is drawn to Section 2 of this Guidance, the relevant parts of which may be found at **Appendix C**.

3 Implications for the Council

3.1 Working with People

Residents of Kirklees need to be confident that under the Licensing Act 2003 licence holders under the Licensing Act 2003 are in a position to uphold the four licensing objectives. The committee is required to take appropriate and necessary action against licence holders where they fall short of their duties under the Licensing Act 2003. This will support both the licensing objectives and support the corporate outcomes of citizens in Kirklees living in cohesive communities, feeling safe and protected from harm.

3.2 Working with Partners

The Council's licensing team work closely with partnering agencies, named 'Responsible Authorities' under the Licensing Act 2003. Responsible authorities 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, will 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

4.1 Consultation has taken place in accordance with the Act, and no further representations have been received.

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

7.1 Not applicable

8 Contact officer

8.1 Russell Williams
Group Leader – Licensing
01484 221000
russell.williams@kirklees.gov.uk

9 Background Papers and History of Decisions

9.1 Appendix A – Review Application

9.2 Appendix B – Copy of Premises Licence

9.3 Appendix C – Secretary of States Guidance

10 Strategic Director responsible

Karl Battersby – Strategic Director Economy and Infrastructure
Tel: 01484 221000
Email: karl.battersby@kirklees.gov.uk



APPLICATION FOR THE REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE UNDER THE LICENSING ACT 2003

Please read the following instructions first

Before completing this form, please read the guidance notes at the end of the form. If you are completing this form by hand, please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I, (insert name of applicant) Richard Woodhead

- Apply for the review of a Premises Licence under Section 51
Apply for the review of a Club Premises Certificate under Section 87 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 - Premises or Club Premises details

Postal address of premises or, if none, Ordnance Survey map reference or description:

Long Lane Convenience Store, 50B Long Lane, Dalton

Town/City: HUDDERSFIELD

Postcode: HD5 9LH

Name of premises licence holder or club holding club premises certificate (if known):

Number of premises licence or club premises certificate (if known): PR(A)1377

Part 2 - Applicant details

Please 'check' appropriate box(es)

I am:

- 1. An interested party (please complete A or B below)
(a) a person living in the vicinity of the premises
(b) a body representing persons living in the vicinity of the premises
(c) a person involved in business in the vicinity of the premises
(d) a body representing persons involved in business in the vicinity of the premises
2. A responsible authority (please complete C below)
3. A member of the club to which this application relates (please complete A below)

A - Details of individual applicant

Mr

Surname:

Forename(s):

I am 18 years old or over: [checked]

Current postal address if different from premises address:

Town/City:

Postcode:

Daytime contact telephone number:

E-mail address (optional):

B – Details of other applicant

Surname:

Forename(s):

Address:

Town/City:

Postcode:

Daytime contact telephone number:

E-mail address (optional):

C – Details of responsible authority applicant

Other title, e.g. R Mr

Surname:

Woodhead

Forename(s): Richard

Address:

West Yorkshire Police Licensing, Flint Steet

Town/City:

Huddersfield

Postcode: HD1 6LG

Daytime contact telephone number:

E-mail address (optional):

This application to review relates to the following licensing objective(s): (Please 'check' one or more boxes)

(a) The prevention of crime and disorder

(b) Public Safety

(c) The prevention of public nuisance

(d) The protection of children from harm

State the ground(s) for review (please read Guidance note 1):

A large amount of none duty paid tobacco products were found within the store. Impacting on crime and disorder, and public safety licensing objectives.

RESTRICTED

Please provide as much information as possible to support the application (please read Guidance note 2)

A joint partnership operation was put into place linking West Yorkshire police, trading standards and the local authority. It was carried out in the evening of Thursday 11th July where a number of licensed premises were visited to see if none duty paid tobacco was being sold or stored in the premises.

Officers attended the shop where 1126 packets (approx. retail value £11300) were found

As well as the packets of cigarettes there were 21 pouches of 50g hand rolling tobacco. The approximate value of the tobacco is £500, giving a combined retail value of £11,800

Officers also found there were no fire extinguishers on site, CCTV was on site but no one could work the system. There were also no form of first aid facilities for either staff or customers

We feel the management and day to day running of this shop has greatly impacted on the licensing objectives. None duty paid tobacco products were present.

West Yorkshire police feel that the evidence presented is strong enough for the licensing panel to revoke this licence, and that serious consideration is given to revocation.

Have you made an application for review relating to this premises before? NO

If 'YES', please state the date of that application:

RESTRICTED

If you have made representations before relating to this premises, please state what they were and when you made them:

[Empty box for representations]

Please 'check' appropriate box(es)

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements, my application will be rejected

It is an offence, liable on conviction to a fine up to Level 5 on the standard scale, under Section 158 of the Licensing Act 2003, to make a false statement in, or in connection with this application

Part 3 – Signatures (please read Guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (see guidance note 4). If signing on behalf of the applicant, please state in what capacity:

Signature

[Redacted signature]

Date:

26 July 2019

Capacity:

Police Licensing Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read Guidance note 5):

Surname:

Forename(s):

Address:

Town/City:

Postcode:

Telephone number (if any):

If you would prefer us to correspond with you using an e-mail address, please state your e-mail address (optional):

Notes for Guidance

- The ground(s) for review must be based on one of the licensing objectives.
- Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
- The application form must be signed.
- An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
- This is the address which we shall use to correspond with you about this application.

PREMISES LICENCE

Licensing Act 2003

PR(A)1377**THIS LICENCE IS ISSUED BY**

LICENSING
 Flint Street Depot
 Flint Street
 Fartown
 Huddersfield
 HD1 6LG

Tel: 01484 456868
 Email: licensing@kirklees.gov.uk

POSTAL ADDRESS OF PREMISES**Unit 1-2 50B Long Lane**

Units 1 And 2
 50B Long Lane
 Dalton
 Huddersfield
 HD5 9LH

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

Sale of Alcohol

THE TIMES THE LICENCE AUTHORIZES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Sale of Alcohol

Day(s)	From - To
Monday to Sunday	07:00 - 23:00

THE OPENING HOURS OF THE PREMISES

DAY(S)	FROM	TO
Monday to Sunday	07:00	23:00

WHERE THE LICENCE AUTHORIZES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND/OR OFF SUPPLIES

Alcohol is supplied for consumption off the Premises

NAME (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF THE PREMISES LICENCE HOLDER

Email address

Mobile Number

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

NAME, ADDRESS OF THE DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OR PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR (WHERE THE PREMISES AUTHORISES THE SUPPLY OF ALCOHOL)

PERSONAL LICENCE NUMBER:
LICENSING AUTHORITY:

Kirklees Council

PREMISES LICENCE

Licensing Act 2003

PR(A)1377**ANNEXES****ANNEX 1 – MANDATORY CONDITIONS****ANNEX 1 - MANDATORY CONDITIONS**

Alcohol:

1. No supply of alcohol may be made under this licence:
 - a. At a time when there is no designated premises supervisor in respect of the premises licence, or
 - b. At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
3. The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either -

- a. a holographic mark, or
 - b. an ultraviolet feature.
4. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

For the purposes of the condition set out in paragraph 1 of this condition -

- a. "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- b. "permitted price" is the price found by applying the formula $P = D + (D \times V)$ where -
 - i. P is the permitted price,
 - ii. D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - iii. V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- c. "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
 - i. the holder of the premises licence,
 - ii. the designated premises supervisor (if any) in respect of such a licence, or
 - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- d. "relevant person" means, in relation to premises in respect of which there is in force a club premises

certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

e. "value added tax" mean value added tax charged in accordance with the Value Added Tax Act 1994.

5. Where the permitted price would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

6. (1) Sub-paragraph (2) applies where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

ANNEX 2 – CONDITIONS CONSISTANT WITH THE OPERATING SCHEDULE

1. Deliveries to the premises will be made at times that will avoid disturbances to nearby residents
2. A list to be kept of all refused sales
3. CCTV to be installed to the requirements of the Police.

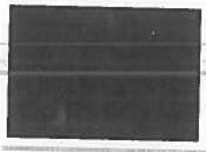
ANNEX 3 – CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY

ANNEX 4 – PLANS OF PREMISE

As outlined in the operating schedule and attached plan

Date Granted: 31 December 2011

Date Commences/Varied: 31 December 2011



Head of Public Protection Service

PREMISES LICENCE SUMMARY

Licensing Act 2003

PR(A)1377**THIS LICENCE IS ISSUED BY**

LICENSING
 Flint Street Depot
 Flint Street
 Fartown
 Huddersfield
 HD1 6LG

Tel: 01484 456868
 Email: licensing@kirklees.gov.uk

POSTAL ADDRESS OF PREMISES

Unit 1-2 50B Long Lane
 Units 1 And 2
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WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND/OR OFF SUPPLIES

Alcohol is supplied for consumption off the Premises

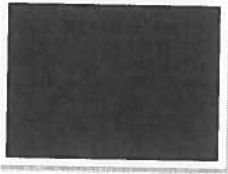
NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)
NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL
STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED
As per Licensing Act 2003

Any conditions applicable to these premises are attached to the licence

Date Granted: 31 December 2011

Date Commences/Varied: 31 December 2011



Head of Public Protection Service

**Relevant Sections of Secretary of State Guidance – Under Section 182 of
Licensing Act 2003**

Crime and disorder

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.4 ~~The inclusion of radio links and ring-round phone systems~~ should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances

where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

Public safety

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8 A number of matters should be considered in relation to public safety. These may include:

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
- Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and

- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

2.9 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38-8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

2.10 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:

- Providing information on the premises of local taxi companies who can provide safe transportation home; and
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

2.12 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.13 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.

2.14 Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.
