

Report to Licensing Committee

Date of Hearing: Monday 26 February 2024
Report Author: Charlene Ellis, Licensing Officer

DECISION REQUIRED



For Publication – Not Exempt

Application: Review of Premises Licence
Premises Details: Choice of Horsham, 1 Park Way, Horsham, RH12 1DP

Executive Summary

A review of Premises Licence, sort by Responsible Authority West Sussex County Council Trading Standards (WSCCTS) on the grounds that the following Licensing Objectives under the Licensing Act 2003 (the 'Act') are not being effectively promoted:

- i) Prevention of Crime and Disorder; and
- ii) Public Safety

WSCCTS believes that this premises has been conducting criminal activity, including the storage and supply of illicit tobacco and oversize non-UK compliant vapes that cannot be legally supplied in the United Kingdom.

WSCCTS deem it both proportionate and necessary to invite the committee to review the existing premises licence, to limit further criminal activity by the licence holder and to act as a deterrent to other operators considering such illegal conduct. The Responsible Authority have suggested an appropriate outcome of the review would be the revocation of Premises Licence.

Recommendations

It is recommended:

- i) That the Sub-Committee considers and determines the application initially made by WSCSSTS Service seeking a review of the current Premises Licence granted in respect of the premises known as Choice of Horsham under the Licensing Act 2003 (the 'Act').
- ii) That the Sub-Committee considers the contents of this report and any oral or documented evidence during the hearing and determines the review application in accordance with the Act.
- iii) The Sub-Committee give reasons for its decision.

Reasons for Recommendations

- i) The Sub-Committee is required to determine the application by taking steps, as it considers appropriate for the promotion of the Licensing Objectives under the Act

Having both regard to the review application and any relevant representations received, appropriate considerations for the promotion of the Licensing Objectives are outlined in point 4, next steps.

Background Papers

- Licensing Act 2003 (as amended)
- Home Office Guidance issued under Section 182 of the Licensing Act 2003 (August 2023)
- Horsham District Council's current Statement of Licensing Policy

Appendices to Report

Appendix 1: Current Premises Licence – Choice of Horsham

Appendix 2: Application for Review of Premises Licence

Appendix 3: Map of Local Area (Premises Locality)

Appendix 4: Further Evidence Submitted by Trading Standards in Support of Review

- Appendix 4a) Witness Statement – Boden
- Appendix 4b) Witness Statement - Jillett
- Appendix 4c) Witness Statement - Rogers

Appendix 5: Photo Exhibits Submitted by Trading Standards in Support of Review

Appendix 6: Historic Intervention/ Reports /Exhibits Submitted by Trading Standards

- Appendix 6a) Trading Standards Warning Correspondence December 2022
- Appendix 6b) Review Decision Notice 14 March 2023

Appendix 7: Public Health Representation in Support of Review

Appendix 8: Sussex Police Representation Support of Review

- Appendix 8a & 8b) – Supporting Police Data

Appendix 9: Public Representation Against the Review

Appendix 10: Unannounced LA03 Inspection February 2024 by Horsham District Council

- Appendix 10a) Officer Inspection Feedback to Site & 10b) Supplementary templates Good Practice Guide for Licensed Premises

Wards affected: Town Centre

Contact: Charlene Ellis, Licensing Officer Charlene.Ellis@horsham.gov.uk

Background Information

1 Introduction and Background

- 1.1 The premises known as Choice of Horsham has been licensed by Horsham District Council since March 2016. The current licence and the position of Premises Licence Holder is held by licensee Mr Harinder Singh Anand, who also took over the role as Designated Premises Supervisor in December 2022.
- 1.2 The premises is authorised for The Sale by Retail of Alcohol, operating between the hours of 08:00- 23:00 Monday to Sunday. A full copy of the premises licence is attached at **Appendix 1**
- 1.2 At any stage following the grant of a Premises Licence, any person or Responsible Authority may request the Licensing Authority to review a premises licence because of matters, arising at the premises which raise concerns in connection with the promotion of one or more of the Licensing Objectives as part of the Act.

The licensing objectives are:

- The Prevention of Crime and Disorder;
- Public Safety;
- The Prevention of Public Nuisance; and
- The Protection of Children from Harm.

Each objective is of equal importance. The promotion of the four objectives is a paramount consideration at all times.

- 1.2 On 11 January 2024, the Licensing Service received an application for Review of Premises Licence from Mr Peter Aston, West Sussex County Council (WSCC) Trading Standards Service Team Manager.

Review applications sit within the provisions of Section 51 of the Act and a full copy of the application, including the grounds for review, is included at **Appendix 2**

- 1.3 It falls to the Sub-Committee to consider and determine the review application.
- 1.4 A map showing the location of the premises is attached at **Appendix 3**

2 Relevant Council policy

- 2.1 Horsham District Council Statement of Licensing Policy

3 Details

- 3.1 The grounds for this review by WSCC Trading Standards are that the following Licensing Objectives under the Act are not being promoted:

- i) Prevention of Crime and Disorder; and
- ii) Public Safety

3.2 The application highlights the actions taken by WSCC Trading Standards Officers from August 2022 to date:

- On the 5 August 2022 West Sussex County Council Trading Standards (WSCCTS) received a complaint from a member of the public alleging that Ashmans Express Ltd/ta Choices of Horsham was selling vapes to children, this was followed by a further complaint on 3 October 2023 to WSCCTS stating that the same premises was selling oversize vapes.
- The business received a warning letter from WSCCTS concerning the following items, these were found by WSCCTS Officers during an inspection of the premises on 16 August 2022
 - 520 oversize E-cigarettes
 - 3 unsafe electrical adapters
- On 14 December 2022, as part of an Underage Sales operation a 17 year old Trading Standards volunteer was sold a bottle alcohol
- On 14 March 2023, Ashmans Express Ltd/ta Choices of Horsham was subject to a Premises Licence Review, this resulted in a 1-month suspension of licensable activities. Relevant historic papers are attached at **Appendix 6a and 6b**
- On the 11 October 2023, Officers from WSCCTS, Sussex Police, a sniffer dog and its handler and Senior Accredited Financial Investigator visited Ashmans Express Ltd/ta Choices of Horsham. During the inspection the following items were found and seized: -
 - 95 oversize 'ENE' Legend 3500 Puff disposable vapes. Located in a cardboard box in a small cupboard under the counter at the point of sale. (The Tobacco and Related Products Regulations 2016 sets out the legal requirements for such products, which is equivalent to around 600 puffs)
 - 80 packets of 20 Polish 'Marlboro Gold' cigarettes (1600 sticks in total), were found in the toilet area of the premises. The cigarettes were not in the mandatory, legally required, UK compliant standard packaging, and were not labelled in English as required by regulation. The packaging did not display the mandatory specifically worded 'Smoking kills quit now' health warning in English, or the mandatory 'UK Duty Paid' label.
- Witness statement from the attending dog handler on 11 October 2023 is attached at **Appendix 4a**
- Witness statement from the attending Senior Accredited Financial Investigator on 11 October 2023 is attached at **Appendix 4b**
- Witness statement from the attending Trading Standards Enforcement Officer is attached at **Appendix 4c**

- Supporting photo exhibits submitted by Trading Standards in support of review are attached at **Appendix 5**

3.3 WSCCTS, acting as a Responsible Authority have outlined that they do not have confidence that the licensing objectives are being promoted, believing that Choice of Horsham have been conducting criminal activity, including the storage and supply of illicit tobacco and oversize non-UK compliant vapes which cannot be legally supplied in the United Kingdom.

WSCCTS deem it both proportionate and necessary to invite the committee to review the existing premises licence, to limit further criminal activity by the licence holder and to act as a deterrent to other operators considering such illegal conduct. The Responsible Authority have suggested an appropriate outcome of the review would be the revocation of Premises Licence.

4 Next Steps

4.1 Where the Sub-Committee considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition)
- exclude a licensable activity from the scope of the licence
- remove the designated premises supervisor
- suspend the licence for a period not exceeding three months;
- revoke the licence

The Sub-Committee may also choose not to take any action or may issue an informal warning.

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.

5 Outcome of Consultation

5.1 The application was advertised by way of a Blue A4 Notice at the premises for public viewing, as required by the Licensing Act 2003. This was in addition to publication on the authorities website.

5.2 A copy of the application was served on all statutory consultees in accordance with the provisions contained within the Licensing Act 2003

5.3 **Environmental Health and Licensing** – no representation

5.4 **Local Planning Authority** – no representation

5.5 **Home Office** – no representation

5.6 **Public Health** – supporting representation attached at **Appendix 7 West Sussex**

5.7 **Fire and Rescue** – no representation

5.8 **Sussex Police** – supporting representation attached at **Appendix 8**

5.9 **Public Health** - representation against review x1 attached at **Appendix 9**

5.10 During the consultation process, the premises was visited by Horsham District Council Licensing Officer Charlene Ellis. The visit was unannounced and a copy of the inspection report and resulting correspondence and advice can be viewed at **Appendix 10, 10a and 10b**

6 Other Courses of Action Considered but Rejected

6.1 None

7 Resource Consequences

7.1 None

8 Legal Considerations and Implications

8.1 The Committee must determine the application in accordance with the Licensing Act 2003 (LA03), HDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the information and documentation introduced in this report and Appendices.

8.2 The legal threshold is on the balance of probabilities and the Committee must be satisfied that on the evidence, the occurrence of the event or events was more likely than not.

9 Risk Assessment

9.1 This application does not relate to any of the specific risks on the Corporate Risk Register.

10 Procurement implications

10.1 None

11. Consequences of Proposed Action

<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>The Sub-Committee are to determine the application under the four licensing objectives. The prevention of crime and disorder is one of the licensing objectives.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>The operation of the Licensing Sub Committee is a quasi-judicial function and as such particular regard is to be had to Article 6 'the right to a fair trial'.</p>
<p>What is the impact of the proposal on Equality and Diversity?</p>	<p>There are no specific equality issues.</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>There are no specific sustainability issues.</p>