

APPENDIX D

REPORT TO: LICENSING SUB-COMMITTEE 04 SEPTEMBER 2014

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR ROSS C LEE

**Licensing Act 2003 – Application for a review of a premises licence
Kwiki Mart, 111-113 Albert Road, Southsea PO5 2SQ**

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider an application submitted by a local resident for the review of a premises licence in respect of the above Kwiki Mart premises and pursuant to section 51 of the Licensing Act 2003 ("the Act").

2. STATUTORY PROVISIONS

The steps set out in the act for reviewing premises licences and club premises certificates are intended to 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.

At any stage following the grant of a licence or certificate, a responsible authority or any other person may make an application for the review of a licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

3. THE APPLICATION

The application and grounds for review have been submitted by Mr P Leworthy who lives at 105c Albert Road which is a first floor flat almost directly above the Kwiki Mart premises situated at 111-113 Albert Road, Southsea.

The review is attached as Appendix **A** to this report and relates to the four licensing objectives:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm.

The grounds for the review relate to the premises having permission to sell alcohol on a 24/7 basis and an alleged concern of late night noise, disturbance and fighting in the immediate environs of both Kwiki Mart and Mr Leworthy's property. He says that he can see customers coming and going with "the distinctive blue bags".

The resident has requested that the committee consider reducing the hours for the sale of alcohol.

The allegations are strongly refuted by the licence holders and their legal representative - see appendix **C**.

4. BACKGROUND INFORMATION

Kwiki Mart at 111-113 Albert Road benefits from a premises licence permitting the sale of alcohol 24 hours a day 7 days a week. These hours are consistent with the opening hours for the store.

The licence holders are Mr & Mrs Aranan who have an extensive interest in licensed premises within the city. Mrs Aranan is the current designated premises supervisor.

Under the previous licensing regime, Kwiki Mart held a Justices' licence permitting off sales of alcohol between 0800 and 2300 Mondays to Saturdays. These hours continued under the auspices of the first premises licence granted by the council pursuant to the 2003 act and at the second appointed day ("SAD") in November 2005.

In January 2006 an application to vary the premises licence to permit 24/7 alcohol sales was approved after negotiation between the applicant and the Chief officer of Police.

Conditions including a requirement that 3 members of staff (one to hold a personal licence) be on permanent duty between the hours of 2300 and 0600 daily were imposed. This represents the current situation.

Kwiki Mart is situated on the north side of Albert Road at the junction with Wish Place. The Royal Albert pub and Ken's Kebab House are immediately nearby. Southsea Infant School and Heron House are opposite.

Albert Road is an extremely busy vehicular thoroughfare with a vibrant and established late night economy including proliferation of late night/early morning eating houses.

A copy of the premises licence is attached as Appendix **B**. This includes both a plan of the premises interior trading area and a location plan.

In accordance with the prescribed legal requirements, a public notice of the application for the review of the licence was advertised both at the premises and also at the Civic Offices. In addition, a notice of the application was also posted on the website of Portsmouth City Council together with the grounds for the review.

A copy of the review application was also served on the responsible authorities.

5. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

No representations have been made by any of the responsible authorities in respect of the review application.

Two letters of support for Kwiki Mart (from a local landlord and business premises) have been received and are attached as Appendix **C**.

6. POLICY AND STATUTORY CONSIDERATIONS

When determining the application for review of the premises licence, the Committee must have regard to:

- Promotion of the licensing objectives which are;
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- The Licensing Act 2003;
- Its Statement of Licensing Policy;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary);
- The statutory guidance issued by the Home Secretary in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

The Statutory Guidance (revised in June 2014) provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 11.1 - *“The proceedings set out in the 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.”*

Paragraph 11.2 – *“ At any stage, following the grant of a premises licence, a responsible authority, or any other person, 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.”*

Paragraph 11.10 - *“Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.”*

Paragraph 11.16 - *“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.”*

In reaching a decision upon a review application, the Statutory Guidance offers assistance to the Licensing Authority as follows:

Paragraph 11.17 – *“The licensing authority may decide that the review does not require it to take any steps appropriate 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 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 holder of the licence.”*

Paragraph 11.18 - *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 stepped approach to concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate”.

In cases where the Licensing Authority considers that action under its statutory powers are appropriate;

Paragraph 11.19 - *Where the licensing authority considers that action under its statutory powers is appropriate, 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.*

Paragraph 11.20 – *“In deciding which of these powers to invoke, it is expected that licensing authorities should so far 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 an appropriate and proportionate response”.*

Paragraph 11.21 – *“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”.*

Paragraph 11.22 – *“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”.*

Paragraph 11.23 - *“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 an appropriate 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 appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence”.

Paragraph 11.24 - A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted.

Paragraph 11.25 – Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

7. APPEAL PROVISIONS

An appeal against any punitive sanctions imposed may be made within 21 days of the licence holder being notified of the licensing authority's decision to a Magistrates' court. An appeal may be made by:

- the applicant for the review;
- the holder of the premises licence; or
- any other person who made relevant representations in relation to the application.

The decision of the Committee, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

A copy of the Statement of Licensing Policy, statutory guidance and the Act has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

8. APPENDICES

- A. Copy of the review application submitted by Mr P Leworthy
- B. Copy of the current premises licence to include a location plan
- C. Copies of relevant supporting representations received including a submission by Blake Morgan solicitors on behalf of the licence holders

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION

For Licensing Manager
And on behalf of Head of Health, Safety and Licensing

Agenda item

Agenda item

Licensing Act 2003 - Application for a review of a premises licence for Kwiki Mart, 111-113 Albert Road, Southsea PO5 2SQ

- [Meeting of Licensing Sub-committee, Thursday, 4th September, 2014 9.30 am \(Item 76.\)](#)

The purpose of this report is for the committee to consider an application submitted by a local resident for the review of a premises licence in respect of the above Kwiki Mart premises and pursuant to section 51 of the Licensing Act 2003 ("the Act").

Decision:

The application for the review of a premises licence at Kwiki Mart, 111-113 Albert Road, Southsea was considered by the sub-committee, however, there was insufficient substantiated evidence to change or amend the licence as it stands.

REASONS: The sub-committee carefully considered the application, including the representations made at the hearing and attached to the committee report. Whilst they had sympathy for the problems faced by the applicant, there was insufficient substantiated evidence before the sub-committee to change or amend the licence as it stands. This is because the sub-committee was not satisfied that the nuisance encountered is limited to the Kwiki Mart. The sub-committee encouraged the applicant and the store owner to liaise in order to address any issues which may arise in future. Equally though, if the applicant does encounter future issues the sub-committee would urge him to keep a diary of issues, and liaise with

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Environmental Health in order for them to evidence the noise experienced and link it directly to the premises.

Minutes:

Mr Leworthy, the applicant and Councillor Vernon-Jackson, representing Mr Leworthy were in attendance.

Mr Jon Wallsgrove, solicitor and Mr Aranan, the premises licence holder, were also in attendance.

The review hearing procedure was followed.

The principal licensing officer introduced the report and explained that the applicant, Mr Leworthy lives above the premises and paints a gloomy picture. Mr Aranan disputes this.

Councillor Vernon-Jackson, on behalf of Mr Leworthy, included the following points in his representations:

- Mr Leworthy lives almost above the Kwiki Mart.
- There is no dispute that Albert Road is a busy road.
- Also recognise that we all have a right to sleep at night.
- Only 24hour store and patrons are easily recognised by the distinctive blue bags.
- Mr Leworthy is asking for the hours for the sale of alcohol to be reduced.
- Beggars consistently sit outside the premises drinking alcohol and begging.
- The council recognises there are significant anti-social behaviour in this area with drug users from Waverley Road using the park.
- Would ask for conditions regarding deliveries.
- Clearly public nuisance is an issue.
- Mr Leworthy had to stay at his girlfriends home just to get some sleep.
- Would ask for door staff to employed at night so they can disperse the beggars and patrons.
- Should also ban deliveries from midnight up to 7am.
- Would ask that no alcohol be sold after midnight.

It was at this point in the hearing that Mr Leworthy produced some photographs which he wished to submit to the sub-committee as further evidence. Mr Wallsgrove refused to allow the photographs to be submitted. The legal advisor explained that under the hearing

regulations all parties must be in agreement to the submission of late representations to enable them to be taken into consideration.

Councillor Vernon-Jackson and Mr Leworthy continued with their representations:

- There is a bus stop opposite and people go from the Kwiki Mart with their bags of cans/bottles to sit and drink.
- Have raised concerns with the manager on numerous occasions.
- When pubs close in Albert Road, people tend to congregate for 10-15 minutes and then move on.
- With Kwiki Mart people congregate all through the night as the store is open.
- Kwiki Mart causes a nuisance to Mr Leworthy and contravenes the licensing objectives.
- When people are in drink or drunk they are noisy and fights can occur.
- This is a clear case of nuisance and a clear case that Kwiki Mart attracts people late at night.
- Door staff need to be visible on the street to move people on.

Mr Jon Wallsgrove included the following points in his representations:




- Mr Aranan does employ door staff daily from midnight but it depends on trade as to whether they work until 4am.
- It is not a requirement of the premises licence to employ door staff.
- The premises are well run.
- It is not Kwiki Mart which creates the beggars.
- The burden is on Mr Leworthy to provide credible evidence in his application. He hasn't been able to prove that.
- The licensing officer reported that it is a busy area.
- Customers of Kwiki Mart are not responsible.
- The criminal damage was not witnessed so cannot be taken into account.
- Mr Aranan has tried to meet with Mr Leworthy but he refused.
- Mr Aranan didn't know Mr Leworthy's issues.
- His staff have not mentioned that Mr Leworthy has been in and spoken with them.
- Beggars on the public highway outside Kwiki Mart are not Mr Aranan's responsibility.
- The problems are not being created by Kwiki Mart.
- Mr Aranan meets regularly with the Police and Trading Standards.
- Police have confirmed that they have no problems and that crime is reducing in the area.

- Police have not made any representations today.
- Letter of support for Mr Aranan from a local business.
- Would have received representations from the tenants of the flats above. To say they are fearful of repercussions is not true.
- No action should be taken.
- Have been selling alcohol for eight years.
- Changed the deliveries for milk and papers to after 6am after Mr Leworthy complained.
- Mr Aranan ensures that his customers behave in a well-mannered way.
- He has taken it upon himself to employ door staff at considerable expense.
- Mr Aranan has done his best to meet with Mr Leworthy to discuss issues but he has refused. He can do no more.

DECISION: The application for the review of a premises licence at Kwiki Mart, 111-113 Albert Road, Southsea was considered by the sub-committee, however, there was insufficient substantiated evidence to change or amend the licence as it stands.

REASONS: The sub-committee carefully considered the application, including the representations made at the hearing and attached to the committee report. Whilst they had sympathy for the problems faced by the applicant, there was insufficient substantiated evidence before the sub-committee to change or amend the licence as it stands. This is because the sub-committee was not satisfied that the nuisance encountered is limited to the Kwiki Mart. The sub-committee encouraged the applicant and the store owner to liaise in order to address any issues which may arise in future. Equally though, if the applicant does encounter future issues the sub-committee would urge him to keep a diary of issues, and liaise with Environmental Health in order for them to evidence the noise experienced and link it directly to the premises.

Supporting documents:

- [4Sep14licsub item 3 report, item 76.](#)  PDF 279 KB
- [4Sep14licsub item 3 - appendix A application, item 76.](#)  PDF 492 KB
- [4Sep14licsub item 3 - appendix B premises licence, item 76.](#)  PDF 715 KB

Representations following an application to review the premises licence for Kwikimart.

The application for a review of the premises licence has not come as a surprise to Mr Aranan the premises licence holder for Kwikimart. Not because he was aware of his shop causing any issues of crime and disorder or public nuisance in the area but because the applicant had warned him some weeks ago that he was going to try and get the shop closed down.

All the information contained in the application is refuted. The applicant will be required to prove those facts he has stated with credible evidence as they appear entirely unsubstantiated in the way they have been set out in the application. All the allegations are without detail, particularly as to date and time and accordingly mean the premises licence holder is unable to make any proper enquiry into the allegations. Mr Aranan has however, done all he possibly could do as a responsible licence holder, to do just that, as set out herein.

Mr Aranan has owned the premises for approximately 11 years. It has always operated as a 24 hour convenience store. Before the Licensing Act 2003 the hours for the sale of alcohol were fixed by the Licensing Act 1964 but in 2005 the new premises licence was granted with the sale of alcohol 24 hours a day. As such the sale of alcohol has been 24 hours a day for the last 9 years.

He has never had a complaint from any of the local residents or businesses in those 11 years until now. He has spoken to the landlord of the flats immediately above his shop about this application and the landlord has confirmed that none of the tenants have ever complained about the way in which Kwikimart operates. He has spoken to a number of the business locally and again they have confirmed they have no issues with the shop being open 24 hours a day.

Albert Road is a very busy road and particularly on Friday and Saturday nights there is a high footfall of pedestrians. There are a number of licensed premises along Albert Road which close at different times, including restaurants and bars. There is also another convenience store nearby which opens until the early hours of the morning, The Rainbow Stores. Even if Kwikimart were not there at all there would be a significant number of people in the area during the early hours of the morning.

Mr Aranan became aware in May 2014 that one of the residents in the flats above the neighbouring commercial premises was unhappy about his shop and that the resident was making allegations that the customers of the shop were causing substantial disturbance.

On the 16th May he called a staff meeting to discuss the rumour he had heard. One of his staff confirmed the name of the resident who was making the complaints, as the resident had been in the shop and complained to the manager some months before, although not since. The manager in question had left the business at the end of March and accordingly Mr Aranan could not establish what the complaint was or what response his manager gave. The resident who had complained is the applicant for the review.

He contacted the applicant that day by telephone and asked to meet him. The applicant refused and said that he was going to shut the shop down and then he would meet with him to discuss it. The applicant said the problems were with the shouting, beggars outside the shop and that the door staff were not doing anything about it.

Mr Aranan then asked the police and trading standards to a meeting with the staff. At that meeting the police confirmed they had not received any complaints about anti-social behaviour in that area or noise and disturbance. The police officer confirmed that crime had decreased in the area over recent months. This they said may have been helped by the fact that Mr Aranan had been the first retailer in Portsmouth to sign up to the "reduce the strength campaign" for this shop.

On the 17th May Mr Aranan was contacted by the door security company as their door staff had witnessed members of the public having water thrown over them from a window of the flats in the same block where the applicant resides. The applicant was then seen to remonstrate with the people and the police attended the scene sometime later. The people were not customers of Kwikimart.

It is Mr Aranan's position that the applicant is attributing all noise and nuisance in Albert Road to his shop which is simply not the case.

J.S.Khatkar
116 Havant Road
Cosham
Hampshire
P06 2JF



Dear Sirs

Re: Review of Premises Licence for Kwikimart.

I understand that a resident has applied to review the licence and wants the hours to be cut back for selling alcohol. I believe he is suggesting that noise and anti-social behaviour in the area is down to the customers of Kwikimart.

I am the Landlord of Wish Place which are the 6 flats immediately above the Kwikimart. I have spoken to my tenants and none has raised any concern with *me* about the way Kwikimart operates. I am sure if there were problems being caused by the shop I would be the first to know as they would want me to try and sort it out for them. Kwikimart appears professionally run and is a significant benefit to the local community. Late at night at the weekends the area can be busy with people leaving the bars in the area as well as returning home from a night out in Guildhall Walk or Gunwharf. Many of those people won't even be customers of the Kwikimart. I don't see how stopping selling alcohol but staying open to sell everything else is going to have any effect.

I think the Council should take no action as the complaint is unfounded and this is a well run shop which sells alcohol responsibly.

Yours Faithfully

J.S.Khatkar



Dear Sirs

Re: Review of Premises Licence for Kwikimart Albert rd.

I understand that a resident has applied to review the licence and wants the hours to be cut back for selling alcohol. I understand they are suggesting that noise and anti-social behaviour in the area is down to the customers of Kwikimart being able to shop late for Alcohol.

I'm a business owner and resident in Albert rd number 89 only a few doors up from the Kwikkimart. As a resident and a business owner being there almost 24/7 myself ..!!!! I have experienced no issues with the Kwikkimart being open 24/7 to sell alcohol. It is far noisier outside the pubs and takeaways, of which I have no issue with either.

I think the Council should take no action to this complaint as I believe the Kwikimart only goes to enhance Albert rd providing a descent responsible place to buy food drink and alcohol.

Yours Faithfully

David Alexander

MD

