

**LICENSING COMMITTEE (HEARING) – 18 DECEMBER 2009**

**APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR SHURLOCK STORES, 38 SHURLOCK AVENUE, SWANLEY, KENT. BR8 7ST FROM KENT POLICE, TONBRIDGE POLICE STATION, 1 PEMBURY ROAD, TONBRIDGE, KENT. TN9 2HS UNDER THE LICENSING ACT 2003**

**APPLICATION REFERENCE NO: 09/00661/REVIEW**

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<b>Report of the:</b>	Community and Planning Services Director
<b>Status:</b>	For Decision
<b>Portfolio Holder</b>	Cllr. Mrs Bracken
<b>Head of Service</b>	Head of Environment & Operational Services – Mr. Richard Wilson

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**Recommendation:** Members' instructions are requested

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**Background**

- 1 The procedure for Hearings of Sub-Committees of the Licensing Committee established in accordance with Section 9 of the Licensing Act 2003 is attached at Appendix A.
- 2 The application is made by Chief Superintendent Mark Salisbury, Kent Police, Tonbridge Police Station, 1 Pembury Road, Tonbridge, Kent. TN9 2HS on the grounds of the following licensing objectives: prevention of crime and disorder, prevention of public nuisance and the protection of Children from Harm. Kent Police seek a review of the premises licence granted in respect of Shurlock Stores, 38 Shurlock Avenue, Swanley due to ongoing failure to meet the licensing objectives of Prevention of Crime and Disorder, Protection of Children from Harm and Prevention of Public Nuisance.

**The grounds for review are:**

- 3 Shurlock Stores is a small convenience store located within a large residential area which has suffered an increase in anti social behaviour and damage. The premises licence for this store was subject of a previous Review Application applied for by Trading Standards in 2008 due to a sale of alcohol to a person under the age of 18 years during a Trading Standards test purchase operation. This review process resulted in an amendment to the existing premises licence placing additional conditions on the licence as shown in Annexe 4 of Appendix B – Conditions attached after a hearing by the licensing authority.

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- 4 During 2009 information has been received from various sources in relation to possible drug offences and underage sales of alcohol in connection with this premises and there has been numerous calls and information provided to police regarding nuisance youths within the vicinity of this location. (Statements from PC 12730 Cameron & PCSO 56208 Saunders – Appendix C).
- 5 In August 2009 Kent Police made an application to the Magistrates Court for a warrant to be granted under the Misuse of Drugs Act and this warrant was executed by Police Officers on 12 August 2009, also present at this time were staff from Trading Standards and the Police Licensing Officer. During the execution of this warrant a number of small bags containing cannabis and other items associated with the use of drugs were found in the storeroom of the premises. (Statement attached from PCSO Saunders - Appendix D). Also during this operation compliance with the conditions placed upon the premises licence by the licensing committee was checked. It was observed that Conditions 1 and 2 were not being complied with, Conditions 3 and 4 could not be checked as staff present did not have any knowledge of any refusals register kept by the premises. The designated premises supervisor, Mr Hiren Patel, was not present at the premises and attempts to contact him via telephone were unsuccessful.
- 6 The findings in relation to the failure to comply with the conditions of the premises licence were communicated to Mr Patel by Mr G Fridd, Trading Standards Officer, by letter dated 17th August 2009 (Copy of letter – Appendix E)
- 7 On 27 August 2009 a test purchase operation was conducted by Trading Standards in conjunction with Kent Police. At approximately 20:00 hours a 16 year old female entered the premises observed by Alex Brander, Trading Standards Officer, and purchased a bottle of Smirnoff Ice from a member of staff, the female was not challenged and purchased the above product before leaving the premises. Both premises licence holders were present within the trading area at the time of this sale taking place. (Statement from Alex Brander – Appendix F)
- 8 As a result of the ongoing failure of the premises licence holder and designated premises supervisor to comply with the conditions placed upon them at the last licensing hearing and the continued sale of alcohol to persons under the age of 18 years and in view of the evidence of other criminal activity connected to this premises it is felt that a review of this premises licence is required.
- 9 Mr Hiren Patel and Mrs Kishor Patel have continued to carry out licensable activity at this premises other than in accordance with the premises licence granted for the sale of alcohol and have failed to promote the licensing objectives as set out in the Licensing Act 2003. As there has been a failure to comply with existing conditions imposed upon the licence Kent Police believe

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that it is unlikely that additional conditions will assist with the issues raised in relation to this premises.

- 10 The Secretary of State's Guidance as issued under s182 of the Licensing Act 2003 makes it clear:

"There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. [This] is the use of the licensed premises: ... for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people... It is envisaged that licensing authorities [and] the police... will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence - even in the first instance - should be seriously considered. ..." (Paragraphs 11.25 and 11.26 of the Secretary of State's Guidance Issued under s 182 of the Licensing Act 2003)

This guidance has been approved by resolution of each House of Parliament and is something that the licensing authority must have regard to.

- 11 The Police regard the breaches of the Licensing Act shown in this case to be so serious that the licence for the premises should be revoked.
- 12 In summary, there is a disregard for the law in general and the Licensing Act in particular, a disregard for the advice given by Police and Trading Standards, and a need to protect young people from the consequences of alcohol being easily available to them.

**Representations received from statutory consultees:**

Fire Safety	<b>NO ADVERSE COMMENTS</b>
Trading Standards	<b>SEE APPENDIX G</b>
Social Service	<b>NO ADVERSE COMMENTS</b>
Police	<b>SEE ABOVE STATEMENTS</b>
Commercial	<b>NO ADVERSE STATEMENTS</b>
Environmental Protection	<b>NO OBJECTIONS</b>

Development Control	<b>NO ADVERSE STATEMENTS</b>
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**Representations received from interested parties:**

Trading standards attached at Appendix G.

**Conclusions**

- 13 Without prejudice, the Officer would like to draw to Members attention issues that they may wish to consider:
- 14 The following conditions will be added to the premises licence if the licence is issued:

The supply of alcohol

- 15 Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:-
- 16 No supply of alcohol may be made under the premises licence -
- (a) at a time where 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.
- 17 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Existing conditions - Permitted Hours (from original Justices Off Licence)

- 18 Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- (b) On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- (c) On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- (d) On Good Friday, 8 a.m. to 10.30 p.m.

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- 19 The above restrictions do not prohibit:
- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
  - (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
  - (c) the sale of alcohol to a trader or club for the purposes of the trade or club;
  - (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.
- 20 Alcohol shall not be sold in an open container or be consumed in the licensed premises.
1. The Designated Premises Supervisor (or another person holding a Personal Licence) should at all times be in the shop floor area to personally supervise age restricted sales.
  2. A Challenge 21 policy should be publicised in store with the use of sufficient notices for all potential purchasers to be aware of the policy and this policy should be adhered to in all instances.
  3. A refusals register is to be completed every time a refusal is made to someone because they appear under 21 in a format agreed by Kent Trading Standards.
  4. The refusals register should be checked and reviewed weekly by the DPS and a signature applied to the book to verify this.
  5. There should be a written training procedure proportionate to the size of the business and number of staff with signatures gained from each member of the staff to confirm they have been trained in relation to sales of age restricted goods. This training should include (but not limited to):
    - Making all staff fully aware of the Challenge 21 policy.
    - Training all staff on the use of a refusals register as described in point 3

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6. Forms of identification which are to be accepted as proof of age must be limited to a passport, driving licence (with photo) or pass approved proof of age card.
- 21 The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

**Risk Assessment Statement**

- 22 This Hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005 No. 44.
- 23 The decision of this Hearing will be encompassed within the issued premises licence, and the licence will take effect on the 18 December 2009, subject to any appeal to a Magistrates Court or higher Court.

**Sources of Information:** <http://www.culture.gov.uk/alcohol> and entertainment

**Contact Officer(s):** Mrs. Claire Perry Ext. 7325

Mrs. Leeann Leeds Ext.7270

**KRISTEN PATERSON  
COMMUNITY AND PLANNING SERVICES DIRECTOR**