

Licensing Acts Panel



Listening Learning Leading

Report of Head of Legal and Democratic Services

Author: Nigel Haverson

Telephone: 01491 823426

Textphone: 18001 01491 823426

E-mail: Nigel.haverson@southandvale.gov.uk

Licensing Panel

DATE: 09 September 2011



Application for a new Premises Licence under the Licensing Act 2003 – Sindu Express, 31 Elm Drive, Garsington, OX44 9AG

Recommendation(s)

That the Panel consider the application for a new premises licence, the suggested conditions from Thames Valley Police, the residents' objections to the application and decide whether to grant the licence as requested, refuse the application, grant it with amendments or grant it with conditions attached.

Purpose of Report

1. To present the facts and relevant representations received in respect of an application for a new premises licence for Sindu Express, 31 Elm Drive, Garsington under Section 17 of the Licensing Act 2003 to the Licensing Acts Panel in order that it can determine the application.

Strategic Objectives

2. The relevant objectives are those of "helping people to feel safe and secure" and "managing our business effectively". The relevant corporate priorities are those of "provide value for money services that meet the needs of our residents and service users" and "maintain low levels of fear of crime and anti-social behaviour".

Background

3.1 The Licensing Act 2003 ('the Act') has established a single integrated scheme for licensing premises which are used for the supply of alcohol, regulated entertainment, late night refreshment or permission to carry on some or all of these activities. In the Act these activities are referred to collectively as the 'licensable activities'.

Any assessment of licensable activities must consider and promote the following four statutory objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance and
- The prevention of children from harm

3.2 Where no representations are received in respect of an application for the grant or variation of a premises licence, then the licence would be granted by the Head of Legal and Democratic Services Officer under delegated powers. When valid representations are received regarding the grant or variation of a premises licence, the application will be referred to the Licensing Acts Panel for consideration.

3.3 An application was received from Kanakanayagam Sureshkumar on 14 July 2011 in respect of Sindu Express, 31 Elm Drive, Garsington OX44 9AG (**Appendix 1**). The application seeks to authorise the following:-

- The supply of Alcohol for Consumption off the Premises
 - Monday to Sunday 07.00 to 23.00
- Hours the premises are open to the public
 - Monday to Sunday 07.00 to 23.00

3.4 The proposed Designated Premises Supervisor will be Kanakanayagam Sureshkumar, who holds a Personal Licence **Number 05/0574/PERSON**, issued by Wycombe District Council.

3.5 The council is satisfied that the application was advertised in accordance with the Licensing Act 2003. An identical application was made in 2010 by Mr Sureshkumar for the premises but the application was rejected because Mr Sureshkumar failed to comply with the advertising requirements for applications despite being advised of the actions he should have taken to comply.

3.6 A map of Garsington showing the premises location is displayed as **Appendix 2**

3.7 Trading Standards, Planning, Environmental Protection and Health and Safety in their capacity as Responsible Authorities have raised no objections.

3.8 Thames Valley Police have responded indicating that they have a history of anti social behaviour in the area of 31 Elm Drive, Garsington and has requested that the following conditions are attached to any licence that may be granted:

1. All alcoholic spirits to be kept behind the counter (as stated in plan). The remaining alcohol to be kept within viewing distance of the counter and not near the entrance of the premises.
2. The premises shall adopt a Challenge 21 Policy. All members of staff shall seek "credible photographic proof of age evidence" from any person under the age of 21 years and who is seeking to purchase alcohol. Such credible evidence, which shall include a photograph of the customer, will either be a passport or photographic driving licence.
3. The CCTV system shall incorporate a recording facility which shall be retained and stored in a suitable and secure manner for a minimum of one calendar month. The system will comply with the Data Protection Act 1998 and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. The system will incorporate a camera covering the entrance and inside of the store as well as a camera covering the front exterior of the premises and this will be capable of providing an image that is regarded as "identification standard". Should the CCTV suffer failure the police will be informed and the system repaired in 48 hours.
4. The premise shall keep and maintain an Incident/Refusals book. This is to record any refusals of sales or incidents that occur at the premises. **See Appendix 3.**

3.9 31 letters of objection from residents have been received. All are concerned with the potential for anti social behaviour arising from young people gathering at the premises as happened previously when there was a store at the premises. Objections have also been received from the local ward member Councillor Mrs Gillespie and from Garsington Parish Council. The Interested Parties' letters can be seen at **Appendix 4.**

4. Options

4.1 In determining applications the authority must give weight to:

- a. The Secretary of State's Guidance Issued under Section 182 of the Licensing Act 2003
- b. The Council's Statement of Licensing Policy
- c. The steps necessary to promote the Licensing Objectives

4.2 In view of the above, the Panel is requested to consider the application for the new premises licence and decide whether:

- a. to grant the application as applied for, or
- b. to refuse the application, or
- c. to grant the application with amendments, or

- d. to grant the application as applied for but attach additional conditions to the licence.

5. Legal Implications

- 5.1 The Human Rights Act 1998 requires public bodies to ensure everything they do is compatible with Convention Rights and makes it unlawful for a public authority to act incompatibly with those Rights. When determining applications the Panel will be aware of Human Rights considerations, specifically Part 2, Article 6 (right to a fair trial) for the applicant and Article 8 (right to respect for private and family life) for those making representations.
- 5.2 The hearing of all applications is subject to the principles of natural justice.
- 5.3 Section 17 of the Crime and Disorder Act 1998 states, 'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to exercise its various functions with due regard to the likely effect of those functions and the need to do all that it reasonably can to prevent crime and disorder in its area.'
- 5.4 Under Schedule 5 part 1 of the Licensing Act 2003 any person aggrieved by the decision in respect of the application may appeal to a Magistrates' Court within 21 days of the date of the decision.

6. Risks

- 6.1 None identified

7. Other Implications

- 7.1 None

8. Conclusion

- 8.1 This report provides information submitted by the applicant, Thames Valley Police, residents, the local ward member and the local parish council. The Panel should determine this application on its merits with a view to promoting the relevant Licensing Objectives which are 'the prevention of crime and disorder', 'public safety', 'the prevention of public nuisance' and 'the protection of children from harm' and have regard to the relevant provisions of the Act, Statutory Guidance and the council's Licensing Policy.
- 8.2 The Panel must have had regard to all the relevant objections made and the evidence it hears either grant the licence, refuse the licence, grant the licence with amendments or grant the licence as applied for but attach conditions to it.

Background Papers

- Legislation referred to in the report.