

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Thursday 20th June 2013 at 2pm
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor G Sandell (Chairman) Councillor M Langwade Councillor C Manning
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Cara Jordan
Premises:	Upwell Post Office, Town Street, Upwell, Wisbech
Applicants:	Mr K Lakhman and Mrs R Lakhman
Responsible Authorities:	Tony Grover – Licensing Officer, Norfolk Constabulary
Other Persons:	Prue Lester, Upwell Parish Council Jill Gooch, Upwell Parish Council Bill Pugh, Upwell Parish Council Brenda Johnson Graham Tidmas David Cooper

1. WELCOME AND APOLOGIES

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a premises application in respect of Upwell Post Office, Town Street, Upwell under the Licensing Act 2003.

There were no apologies.

2. ITEMS OF URGENT BUSINESS

There were none.

3. DECLARATION OF INTERESTS

There were none.

4. TO CONSIDER THE APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF UPWELL POST OFFICE

The Chairman introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Cara Jordan. The applicant, Mrs Lakhman introduced herself. Tony Grover, Norfolk Constabulary introduced himself and explained that because the applicant had agreed to their proposed amendments, his objection had subsequently been withdrawn but he was available to assist if required. All other persons present introduced themselves, including those representing Upwell Parish Council.

5. THE PROCEDURE

The Licensing Manager outlined the procedure that would be followed at the hearing.

6. THE APPLICATION

The Licensing Manager presented his report and explained that a premises licence was required under the Licensing Act 2003 (the 'Act') for the sale of alcohol, regulated entertainment or for the provision of late night refreshment (i.e. the supply of hot food and drink between 11pm and 5am). The four licensing objectives to be considered when determining the application, and relevant representations, were:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

He explained that Mr & Mrs Lakhman had made an application under Section 17 of the Act for the licensable activity of 'sale by retail of alcohol'. A copy of the application had been attached at Appendix 1 and if granted would allow the premises to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Sale by Retail of Alcohol: (For consumption 'off' the premises only)	Monday to Sunday:	6am – 10pm

Mandatory Conditions

The premises licence, if granted would be subject to the following three mandatory conditions:

- Under Section 19(2) of the Act, no supply of alcohol shall be made under this premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a

time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

- Under Section 19(3) of the Act every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This 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 a holographic mark.

Conditions Consistent with the Operating Schedule

The following conditions had been agreed with Norfolk Constabulary and should the application be granted would be added to the premises licence:

- In addition to the CCTV camera supplied by the Post Office, a digital CCTV system should be installed at the premises which was capable of recording images for a continuous period of at least 28 days. Images must be capable of being downloaded in digital format upon request from representatives of the Police or the Licensing Authority. All staff on duty at the premises must be trained in the use of the system and be able to comply with any such request. The system would be maintained in good working order at all times. At least one camera would monitor the main entrance to the shop. Another would be positioned so that all the alcohol displays could be monitored. At least one camera would monitor the footpath area immediately in front of the shop and another would be positioned to monitor the area of the archway leading to the rear of the store. A CCTV monitor would be positioned within the store so that a member of staff was capable of seeing images from the cameras.
- Entrance / exit doors to the premises would each be fitted with at least two 5 lever mortice locks that met British Standard 3621 or equivalent.
- All glazing at the premises (other than that which is laminated) would be enhanced with either security grilles or an aftermarket security film that met current British Standards or equivalent.
- The licence holder will ensure that all staff on duty at the premise are trained in the licensing laws relating to the retail sale of alcohol on initial appointment and annually thereafter. Written records of such training will be kept and made available for inspection upon request from representatives of the Police or the Licensing Authority.

- The licence holder will operate a recognised proof of age identity scheme such as “Challenge 21” and display appropriate notices within the store.
- The licence holder will keep records of all refusals of the sale of alcohol and other incidents that may occur at the premises in a book that will be kept for that purpose. The refusals / incident book will be produced for inspection upon request from representatives of the Police or the Licensing Authority.

Representation from Responsible Authorities

The Licensing Manager reminded Members that under Section 13(4) of the Act it defined ‘responsible authorities’ as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

The Norfolk Constabulary would have objected to the application under the Crime & Disorder licensing objective if the applicants had not agreed to the conditions mentioned above. A copy of the Police’s letter dated 4th June 2013 had been attached to the report at Appendix 2.

There are no representations from the other ‘responsible authorities’ to consider. Namely:

- Norfolk Fire Service;
- Norfolk Safeguarding Children’s Board;
- Norfolk Trading Standards;
- Borough Council Planning;
- Borough Council Health & Safety;
- Borough Council Community Safety & neighbourhood Nuisance;
- Norfolk County Council Public Health Director; and the
- Borough Council of King's Lynn & West Norfolk as the Licensing Authority.

Representations from ‘Other Persons’

As well as responsible authorities, any other person can play a role in a number of licensing processes under the Act. This included any individual, body or business that were entitled to make representations to applications. Representations made must relate to the licensing objectives.

There had been four representations from ‘other persons’ to consider; one from Upwell Parish Council and three from local residents. Copies of these objections had been attached to the report at Appendix 3.

Notices

The applicant was responsible for advertising the application by way of a notice in the specified form at the premises for not less than 28 consecutive days and in a local newspaper. The Public Notice appeared in the Fenland Citizen on Wednesday 22nd May 2013 and should have been displayed on the premises until 11th June 2013.

Plans

A plan of the premises had been attached at Appendix 4 and a location plan attached at Appendix 5.

Questions to the Licensing Manager

In response to a question raised in relation to the glazing of the premises (as requirement of a condition put forward by the Police), Mr Grover explained that other than that which was laminated the security grilles would be fitted on the inside of the glazing. He confirmed he was aware that the premises were located within a conservation area.

A question was raised as to why there had been no representation made by Norfolk Fire Service particularly given the location of the fire exit. The Licensing Manager explained that as a matter of course, all responsible authorities received a copy of any application and it was for them to determine whether they wished to make a representation. He also explained that the Licensing Act was not aimed to duplicate any provisions that existed in other legislation, such as the Fire Regulatory Reform Safety Act.

A query was also raised as to how the application related to planning matters in terms as to whether it was considered that there were already a sufficient number of licensed premises selling alcohol in the area. There had been no representation from the Borough Council's Planning Department. The Licensing Manager explained that "need" concerned the commercial demand for another premises and was a matter for the planning authority and not a matter for the licensing authority in discharge of its functions. However, the cumulative impact of licensed premises on the promotion of the licensing objectives was a proper matter for a licensing authority to consider in developing its licensing policy statement. There however was no such cumulative impact area currently designated within the Borough. Any such application for an area to be considered would require the support of the Police and the Community Safety & Neighbourhood Nuisance Team. It was highlighted that the letter submitted by Norfolk Constabulary stated that they wished to make a representation on the grounds that the crime prevention and disorder objective could be undermined but that they were willing for the licence to be granted if the conditions proposed by them were agreed. It was questioned that if their view was that the crime and prevention and

disorder objective could be undermined, why the area had not been designated as a cumulative impact area

The Licensing Manager also explained that if licensing conditions, for example, permitted the premises to be open until 2am and the planning consent was to 12 midnight, if the premises opened beyond midnight, it would be a breach of the planning consent and a matter for the planning authority.

The Licensing Manager explained that as with any new application, it was difficult to know what the impact of another licensed premises on the area would have, any such impact could only be considered on the likelihood rather than being evidenced based. Under the Licensing Act all parties were encouraged to co-operate in order to minimise the scope for objections to arise. The Licensing Manager also advised that regardless of the outcome of the hearing, 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. The review would be considered by a Licensing Sub-Committee who would have the power to revoke or amend and/or impose additional conditions including reducing the number of hours the premises is permitted to open.

It was highlighted that the representation from the Police failed to mention that the public were allowed access to the rear of the Post Office and that a flat (currently vacant) was situated above the premises. Mr Grover explained that it was the role of the Police to consider the application based on the four licensing objectives, with their main consideration being the prevention of crime and disorder. It was normal practice for the application to be circulated to the relevant local police team for the area for them to have an opportunity to raise any concerns. In this instance, the local police team had not raised any concerns.

7. THE APPLICANT'S CASE

The applicant, Mrs Lakhman presented her case and explained that she was looking to increase her income by offering "off sales" of alcohol. She confirmed that she had applied for the licence until 10pm to be consistent with other premises within the vicinity. Mrs Lakhman confirmed that she had some 26 years' experience running a licensed premises in Peterborough which sold alcohol. Her husband was now the Designated Premises Supervisor (DPS) for that premises.

Questions to the applicant

The Licensing Manager referred to section M of the application form which requested applicants to describe the steps that they intended to take to promote the four licensing objectives, in particular he questioned the applicant as to what she had meant when she had stipulated "no

changes to current operating procedures” in relation to the prevention of public nuisance. The applicant explained that she did not expect to attract any additional customers to her existing ones by selling alcohol. She confirmed that she would also be introducing groceries and a chiller cabinet.

In response to a further question from the Licensing Manager, she clarified that if the licence was granted the only stock of alcohol that would be kept at the premises was that which would be visible on the shelves within the Post Office. There would be no separate storage facility.

The following responses were given to questions raised by the other persons:

- Appropriate staff would be trained and act as the supervisor in her absence. The Licensing Manager also highlighted that it was not necessary for the DPS to be on the premises at all times but it was a mandatory condition that no supply of alcohol could be made at a time when there was no designated premises supervisor appointed to the premises and or at a time when they did not hold a personal licence.
- The Licensing Manager advised that the facade of the shop not being conducive to a conservation area was not a relevant consideration.
- Subject to the licence being granted, the conditions agreed with by the Police would be implemented immediately.
- If trouble did occur on or around the premises, the applicant confirmed that in the first instance she would call the police. A panic button was also installed at the premises which the applicant confirmed that she was willing to move from its current position behind the post office counter.
- The applicant stated that she was unaware of youngsters congregating and drinking on the bench opposite the premises.
- In relation to the number of staff she would employ, the applicant stated that she would employ more than one member of staff if she needed to. If she was not present for any reason there would always be two staff members at the premises.
- The applicant confirmed that she would continue to sell gifts and stationery etc but having lost the Royal Mail Sorting Office, the business was no longer viable hence the need to expand by offering the sale of alcohol and groceries etc.

- In relation to the installation of CCTV at the premises, Mr Grover explained an assessment had been carried out and an enhanced system had been recommended (and subsequently agreed) which would help protect staff and minimise the potential for burglary. He stated that he understood the fears of the community but the impact of granting the licence was an unknown. As the applicant had agreed to the conditions, the Police did not have any great concerns but Mr Grover had noted the concerns raised in the letters of representation. The type of operation proposed was not that of an off-licence but a minimum amount of alcohol would be displayed and offered for sale.
- The applicant confirmed that she currently opened from 8am to 5.30pm and that the existing range of goods that were currently/planned would also be offered to 10pm subject to the licence being granted.

8. OTHER PERSON'S CASE

Miss Johnson

Miss Johnson referred to her letter dated 11th June 2013 (page 40) in which she had raised concerns over the sale of alcohol at the Post Office. The Post Office had been previously raided and there was a slow response time (approximately one hour from Downham Market) from the Police. The area already experienced problems with vandalism and nuisance. There was also a danger of encouraging under-age drinking. Older teenagers were buying alcohol and taking it to the playing field, which was used by young children. Children had also been witnessed drinking.

Parking was also a major issue and extending the business hour would make this more difficult as currently during busy times, it was impossible to park in front of/have access to resident's properties (photographs were circulated to the Sub-Committee).

Questions to Miss Johnson

There were no questions from the applicant or Mr Grover.

In response to questions raised by Members of the Sub-Committee, Miss Johnson confirmed there was already a considerable nuisance in the village with regard to litter, such as drinks cans and bottles in gardens, the playing field and surrounding dykes (problems with broken bottles etc were being experienced from the local pub). She however confirmed that she had not reported this to the Community Safety & Neighbourhood Nuisance Team at the Council. The Chairman also highlighted that if problems were being experienced from an existing licensed premises any party could apply for a review of the licence. Councillor Manning also advised that there was an opportunity for residents to raise any such

issues at their local Safer Neighbourhood Action Panel (SNAP) meetings which were attended by the Police. Mrs Lester explained that, as Chairman of Upwell Parish Council, she regularly attended the SNAP meetings.

Mr Tidmas

Mr Tidmas explained that he and his wife had run the Post Office for some twenty three years with their most profitable items being cards and gifts. There had been no need to sell alcohol or groceries to make the business viable. He stated that he had concerns over the number of staff that the applicant was proposing to employ, stating that he had employed one full-time and two part-time members of staff. The business had been able to support him and his wife as well as his staff. Mr Tidmas highlighted the importance of the Post Office facility within the village.

Mr Tidmas stated that the applicant was very pleasant but was used to running premises within a busy city centre (Peterborough) as opposed to in a quiet village situated in a conservation area. He stated that he was worried that the applicant was unaware of what she was exposing herself to in extending her opening hours and selling alcohol. The Post Office had been previously subject to two raids, with the safe being ripped out of the premises. The Police response time was slow which would leave her and potential other local residents at risk in having to deal with potential situations.

Mr Tidmas referred to problems he was experiencing in relation to anti-social behaviour (urination in his driveway etc). He further relayed his concerns about the vulnerable position the applicant would be exposed to, stating that he could not believe that the local authority and police would allow it and encourage her. The Legal Advisor advised that the focus should be on the application in question.

Questions to Mr Tidmas

There were no questions from the applicant.

The Chairman referred to Mr Tidmas's concerns for the applicant and questioned whether he had similar concerns for other licensed premises within the local area. In response, Mr Tidmas confirmed he did have concerns but other premises did not have a post office safe located at the back of their premises.

Mr Cooper

Mr Cooper explained that he had concerns in relation to the prospect of additional traffic congestion with an increase in the number of vehicles parking outside neighbouring properties if the current business hours were extended. Parking places were already restricted.

With regards to crime and disorder, Mr Cooper explained that there were already concerns about anti-social behaviour in the village and the Police had proposed a number of conditions to address the possibility of the crime and disorder objective being undermined.

Mr Cooper referred to the Licensing Act 2003 with the emphasis being on the promotion of the four licensing objectives referring to page 6 of the Agenda, Fundamental Principles (Section 3.0 of the Borough Council of King's Lynn and West Norfolk's Licensing Policy) which stated that the Council should carry out its various licensing functions so as to "promote" the four licensing objectives. He suggested that there was nothing in the applicant's application that demonstrated the promotion of the licensing objectives. Even with the applicant agreeing to the conditions proposed by the Police, Mr Cooper stated that he still had concerns for the local community.

Mr Cooper referred to page 26 of the Agenda (section M) which requested the applicant to describe the steps that she intended to take to promote the four licensing objectives in particular the prevention of public nuisance (sub-section d). The applicant had stipulated that there would be "no changes to current operating procedures" which he suggested demonstrated a lack of appreciation to the potential safety risks particularly if a member of the public was refused a sale. Mr Cooper also referred to the likely response time before assistance was received from the Police which could see staff in the Post Office and potentially neighbours being put in a vulnerable position.

There were no questions for Mr Cooper.

Upwell Parish Council

Mrs Lester, representing Upwell Parish Council stated that the applicant would not be aware of some of the existing problems being experienced by residents as she returned to Peterborough at the close of her current business trading hours. She referred the Sub-Committee to page 8 of the Agenda, section 2.18, public nuisance which stipulated that it was "important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working in the area around the premises which may be disproportionate and unreasonable". She also referred to section 2.19 which stated that "it is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises". Mrs Lester also referred the Sub-Committee to section 2.24 "to respect the rights of people nearby to a peaceful night".

Mr Pugh referred to the licensing objective “the protection of children from harm” suggesting that children would be exposed to alcohol when they dropped into the Post Office on their way to school. There were already currently inebriated youths using the playing field and sitting on the play equipment. Some parents refused to take their children to the play area and the problems would likely increase if the Post Office was granted a licence to sell alcohol. Mr Pugh suggested that there was no need to increase the hours until 10pm, particularly given the fact that by her own admission, the applicant was not envisaging to attract any additional customers.

Questions to Upwell Parish Council

The applicant took the opportunity to state that if anyone purchased alcohol for the consumption by a child they would be banned.

In response to questions raised by Members as to what action the Parish Council themselves had taken to address the current problems, Mrs Lester explained that they had a good relationship with the local Police Community Support Officer (PCSO) and the Playing Field Committee worked closely with the Police. She also regularly attended the SNAP meetings. Mrs Lester explained that she had been shocked to hear the extent of the problems experienced by the other residents but was aware of problems in the centre of the village when people left the local pub at closing time. Trading Standards were also in regular contact with the local shop in the village. Mrs Lester stated that she would be reporting back to the Parish Council and the Police (at the next SNAP meeting) the problems that were being experienced.

9. SUMMING UP

Other Persons

Miss Johnson confirmed she had no further comments to add.

Mr Tidmas referred to the additional information that had been raised at the hearing and that the Post Office was in a conservation area and in granting the licence, things would not improve.

Mr Cooper stated that there was overwhelming concerns over the effect that granting the licence would have.

No further comments were put forward by Upwell Parish Council.

Applicant

No further comments were put forward by the applicant.

10. OUTSTANDING MATTERS

The Licensing Manager addressed the Sub-Committee and referred them to the current Statement of Licensing Policy which was approved by Full Council on the 25th November 2010 and in particular the following extracts which may be relevant to the application:

3.0 Fundamental principles

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this 'Statement of Policy' will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations on an application.

3.3 Every application will be dealt with impartially and on its individual merits. The Borough Council will not refuse to grant or vary an application unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation.

3.4 Licensing is about regulating licensable activities on licensed premises and any conditions that are attached to premises licences or club premises certificates will be focused on matters which are within the control of the individual licensee or club, i.e. the premises and its vicinity.

18.0 Conditions

18.1 The Borough Council will not impose conditions unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation, or is offered in the applicant's Operating Schedule. Any conditions will be proportional and necessary to achieve the Licensing Objectives.

Guidance Issued Under Section 182 of the Licensing Act 2003

The Licensing Manager also referred the Sub-Committee to the Guidance issued under Section 182 of the Act which licensing authorities must have regard to. The current Guidance was issued by the Home Office in October 2012 and offered advice to licensing authorities on the discharge of their functions under the Act. He referred them particularly to the following extracts which may be relevant to the application and assist the Sub-Committee:

Licence Conditions – General Principles

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly

burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Crime and Disorder

- 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder.

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder. 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.

Public Nuisance

- 2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

- 2.20 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.23 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.24 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

Other Persons

8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous, vexatious and repetitious representations.

Determining Applications

9.1 When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made in accordance with section 17 of the 2003 Act, and in accordance with regulations made under sections 17(3) to (6), 34, 42, 54 and 55 of the 2003 Act. It must similarly determine applications for the grant of club premises certificates made in accordance with section 71 of the 2003 Act, and in accordance with regulations made under sections 71(4) to (7), 84, 91 and 92 of the 2003 Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with those regulations.

Where no Representations are Made

9.2 A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should replicate the proposals contained in the operating schedule to promote the licensing objectives in the form of clear and enforceable licence conditions.

Where Representations Are Made

9.3 Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating

schedule and it is relevant, (see paragraphs 9.4 to 9.10 below) the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

Representations from the Police

9.12 In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Hearings

9.33 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.

9.34 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

9.35 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain

specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.

- 9.36 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities in the interests of transparency the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

Determining Actions that are Appropriate for the Promotion of the Licensing Objectives

- 9.38 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.39 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.40 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the

business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Consistency with Steps Described in the Operating Schedule

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

Imposed Conditions

- 10.8 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.
- 10.9 It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

Proportionality

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions

they impose are only those which are appropriate for the promotion of the licensing objectives.

The Need for Licensed Premises

13.18 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

The Licensing Manager advised that anyone could submit an application for a licence, with the applicant being responsible to advertise the application for 28 consecutive days. Within these 28 days, any party can submit a representation. If representations were received, the 28 day period also gave all parties an opportunity to discuss and try to reach an agreement. If no such representations were received, a licence would automatically be granted on the 29th day. A Licensing Sub-Committee would only be engaged in the process and have any discretion in determining an application if relevant representations had been received.

The Licensing Manager advised that consideration should be given as to whether the issue of traffic/parking problems was a relevant consideration in that by granting a licence to sell alcohol the problems would increase as a direct result. He also referred to the existing problems that had been experienced by residents in terms of nuisance and again advised that Members needed to consider whether the sale of alcohol at the Post Office would contribute to these problems.

The Licensing Manager requested that having regard to the representations received, the Licensing Sub-Committee consider the application, the report and take such steps as it considered appropriate for the promotion of the licensing objectives. These steps were:

- a) To grant the application under the terms and conditions applied;
- b) To grant the application with conditions that the Sub-Committee considered appropriate for the promotion of the licensing objectives;
- c) To reject all or part of the application.

The Sub-Committee were reminded that full reasons for their decision must be given as both the applicant and objectors had a right of appeal against that decision to the Magistrates’ Court.

The Legal Advisor reiterated that the application for consideration was for the sale of alcohol (for consumption “off” the premises only) from Monday to Sunday from 6am to 10pm. Members would need to consider the relevant parts of the written and oral evidence, the Borough Council’s

own Licensing Policy, the Statutory Guidance issued under the Licensing Act 2003 and to the Human Rights Act.

The Legal Advisor reminded the Sub-Committee that the four licensing objectives to be considered when determining the application, and relevant representations, were:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

She also advised that such issues as commercial competition, choice of business venture or planning and highway issues were not relevant considerations. The starting point should be to consider whether the Sub-Committee were minded to grant the application. If for any reason the answer to this question was “no”, the Sub-committee should give consideration to refusing the application or granting the application with any appropriate conditions.

11. REACHING A DECISION

The Sub-Committee retired to consider their decision in private, accompanied and advised by the Legal Advisor on specific points of law and procedure and the Senior Democratic Services Officer for administration purposes, neither of whom took part in the decision making process. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had offered no further legal advice to the Sub-Committee in relation to their decision.

12. PRELIMINARY DECISION

The Chairman read out the preliminary decision and reasons for the decision as follows:

Application

Kings Lynn and West Norfolk Borough Council, being the relevant licensing authority received an application for a premises licence for Upwell Post Office, Town Street, Upwell, Wisbech, PE14 9DA.

During the 28 day representation period, the Council received representations from the following:

Responsible Authorities

Norfolk Constabulary – Letter dated 4th June 2013.

No representations were received from the other ‘responsible authorities’, namely;

- Norfolk Fire Service
- Norfolk Trading Standards
- Norfolk Children's Safeguarding Board
- Norfolk Health Authority
- Planning
- Environmental Health (Health & Safety)
- Environmental Health/Community Safety (Environmental Protection Team)
- Borough Council of King's Lynn & West Norfolk as the Licensing Authority

Other Persons

Four letters of objection had been received from 'other persons' and had been attached to the report before the Licensing Sub-Committee.

Hearing

On 20th June 2013, a hearing was held to consider the application. The Sub-Committee determined the application with a view to promoting the four licensing objectives. It considered the application on its own merits. In reaching its determination, the Sub-Committee had regard to the following matters:

- The relevant parts of the written and oral evidence before them;
- The Kings Lynn and West Norfolk Borough Council Licensing Policy;
- Statutory Guidance issued under the Licensing Act 2003;
- The Human Rights Act.

The Sub-Committee listened to all the evidence and submissions. It heard from:

- The Licensing Manager
- The applicant
- Norfolk Constabulary
- Other persons

Summary of Evidence

The Licensing Manager presented his report.

The applicant informed the Sub-Committee that she was looking to increase her business with off sales of alcohol. She explained that she had run licensed premises in Peterborough for 26 years with her husband.

Mr Grover, from Norfolk Constabulary attended. The Police had no objection to the application as their proposed conditions had been agreed by the applicant.

The persons with representations expressed their concerns that the sale of alcohol between 6am and 10pm would increase anti-social behaviour particularly by youths, increase litter and noise as well as an increase in crime and parking problems.

Findings

The Sub-Committee were of the view that the applicant had experience of running a licensed premises and that she intended to sell alcohol as one element of providing a convenience store as part of the business.

The Sub-Committee considered the views of the other persons/responsible authorities and found the police did not oppose the application as adequate conditions were agreed by the applicant. No other responsible authority raised any representations to the application. Local residents and the Parish Council did raise concerns, mainly relating to worries about an increase in anti-social behaviour and related nuisance. The Sub-Committee were of the view that the risk of an increase in anti-social behaviour by the sale of alcohol from the premises was a perceived fear, and that the conditions agreed by the applicant with the Police were adequate to address these concerns. The Sub-Committee also considered that no additional conditions were necessary to promote the licensing objectives of public safety, prevention of public nuisance and the protection of children from harm as these matters were sufficiently dealt with in the conditions agreed with the police and those consistent with the operating schedule. Concerns about litter were more general and may be adequately dealt with by alternative means such as the Environmental Health Team or the Police.

The Sub-Committee considered only relevant representations. It disregarded any comments which did not assist with considering the likely effect of the grant of the premises licence on the promotion of the licensing objectives. The Sub-Committee found that concerns relating to commercial competition and choice of business venture were not relevant considerations.

Conditions

The Sub-Committee recognised that conditions will only be imposed on a licence where conditions were necessary for the promotion of one or more of the four licensing objectives. The Sub-Committee would only impose conditions on a licence where relevant representations had been made and it considered that it was necessary to impose conditions as a result of those representations. The following conditions were found to be appropriate:

1. The mandatory conditions applicable under the Licensing Act 2003
2. The conditions consistent with the operating schedule as detailed on page 5 of the Licensing Manager's report.

Determination

The Sub-Committee grants the application.

Right of Appeal

There was a right of appeal against the decision to the Magistrates' Court. An appeal must be commenced within 21 days beginning with the day on which the notification of the decision had been received.

Comments on the Decision

At the invitation of the Chairman, the Licensing Manager confirmed he had no comments on the preliminary decision.

13. DECISION

The Chairman therefore confirmed the decision and the reasons as outlined above. He thanked everybody for their attendance and contributions and declared the meeting closed.

The meeting closed at 5.15pm