



**Melton
Borough
Council**

Licensing Sub-Committee

Date 30th October 2019

Report of:

**Assistant Director for Strategic
Planning and Regulatory
Services**

LICENSING ACT 2003: APPLICATION FOR REVIEW OF PREMISES LICENCE

European Market Melton Limited, 36-42 THORPE END, MELTON MOWBRAY, LE13 1RB

1.0 Summary:

- 1.1 The purpose of this report is for members to consider this report and any evidence produced or representations made following receipt of an application to Review a Premises License in respect of the premises Licence held by the European Market Melton Limited and to determine the application by taking such of the steps set out below as the Sub-Committee considers it necessary for the promotion of the licensing objectives.

2.0 Recommendations

- 2.1 **It is recommended that the Sub-Committee have regard to the application and any relevant representations and determine which of the following steps they consider appropriate for the promotion of the licensing objectives to:**
- a) Take no action;**
 - b) Modify the conditions of the Premises Licence, by altering, omitting and or adding to them where relevant;**
 - c) Exclude a licensable activity from the scope of the Premises Licence;**
 - d) Remove the Designated Premises Supervisor;**
 - e) Suspend the Premises Licence for a period not exceeding three months;**
 - f) Revoke the Premises Licence.**

The application should be considered on its merits and any decision should be reasonable and proportionate.

3.0 **Report Detail**

3.1 The Licensing Act 2003 came in to force in September 2005. It passed the powers to the Local Authority to licence premises for any of the following licensable activities :

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club or to the order of a member of the club;
- The provision of regulated entertainment; and
- The provision of late night refreshment.

The licensing objectives are:

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

Each objective is of equal importance.

There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times. However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

3.2 Section 51 of the 2003 Act, allows interested persons, and responsible authorities, to make representations in favour or against the review of a premises licence. All review applications must be determined by a Licensing Committee or Sub-Committee Hearing.

3.3 Background:

European Supermarket with Premises licence number MMA0262 has held a Premises Licence since 2015.

The License Holder is permitted by the premises licence to provide the following:

Supply of Alcohol
Daily 08:00am to 11:00pm

A copy of the current premises licence is attached at **Appendix A**.

A plan of the premises is attached at **Appendix B**.

3.4 Summary of the Application:

On 9 September 2019, the Licensing Authority received a second application from Trading Standards to review the Premises Licence for European Market Melton Limited following concerns about the business since 2016 in respect of underage

sales, smuggled, non-duty paid, foreign labelled tobacco (“illegal”) and smuggled, non duty paid foreign labelled alcohol.

In addition there are concerns about the failure to uphold the licensing objectives as follows:

- Public Safety; and
- The Prevention of Crime & Disorder

The application and supporting evidence is attached at **Appendix C**.

Trading Standards have identified a number of concerns and have seized smuggled alcohol from the premises on two occasions. Trading Standards contend that the information and evidence gained demonstrates there is a continuing issue with this premises and a disregard for the law and previous licence review.

A comprehensive timeline has been provided at pages 4-8 of the application at **Appendix B**.

On the same date the second application for a review was received, Monday 9th September 2019, Simon Greensmith Licensing & Compliance Officer for Melton Borough Council attended the premises to post blue notices as per Section 51 of the Licensing Act 2003. He spoke to the shop assistant who identified himself as Hama Ahmad Taha but he was unable to produce the refusals register and did not understand what a Personal Licence was as per the conditions attached at a previous licence review hearing. The premises licence holder, Mr Jasim Abdulla AMIN, was contacted on his mobile phone but advised Mr Greensmith that he was too busy to attend but would come to the Council Offices. Mr Amin failed to report to the Council offices. Whilst the Officer was present, alcohol was sold in the form of a can of lager, contravening the condition of a Personal Licence holder being present at all times whilst Licensable activities take place. A representation has been submitted by the Licensing Authority and is attached at Appendix D.

A further visit was made on the 11th September 2019 which confirmed the staff still had not displayed the blue notice in the shop. The shop worker Mr Taha was present again and called someone on his phone identified on the screen as Purza Bestun. This person stated that Mr Taha had been trained to sell alcohol in the shop, but he did not hold a Personal Licence. This identified a further breach.

3.5 Relevant Representations:

The application for review was advertised on the premises as required by legislation. The required consultation period commenced on Tuesday 10 September for 28 days ending on Tuesday 8 October 2019.

During the 28 day representation period, one representation was received from the Licensing Authority detailing their concerns as to how the licensing objectives are not being upheld by those responsible for the management of the premises. A copy of this representation is attached at Appendix D.

3.6 Previous Review Application:

Members should note that this is the second application for a review as the Licensing Authority were previously made aware of visits by Trading Standards in January 2016 following the sale of illegal tobacco during a failed test purchase.

At this time the original licence holder and Designated Premises Supervisor (DPS) Mr Masoud RASHID was listed on the premises licence. A few months later there was another complaint and another failed test purchase and the DPS (Mr RASHID) was given a warning letter about the sale and possession of illegal tobacco by trading standards.

The original review application followed a timeline of investigation and seizures at this premises culminating in a Premises Licence Review hearing on 21 August 2018. As a result of that review hearing by the Licensing Sub-Committee it was decided:

- 1) To remove the DPS namely Mr Mariwan ALI from the premises licence;
- 2) To modify the conditions on the premises licence as follows:
 - (a) That there be a Personal Licence holder present at all times when licensable activities are taking place.
 - (b) That there be a refusal register kept at the premises and be produced on demand to Licensing Officers and Police and any other responsible body.

A copy of the decision notice is attached at **Appendix E**.

3.7 Other Licence Applications:

A number of applications have been received in relation to the licence, namely:

| Date | Event: |
|--------------------------------|--|
| 30 th October 2015 | Application received for Premises Licence by Masoud Rashid. He was also the DPS |
| 17 th July 2017 | Application received for Licence to be transferred and DPS changed to Mariwan Ali |
| 5 th July 2018 | First Premises Licence Review Application received from Trading Standards |
| 9 th July 2018 | Application received to transfer premises licence from Mariwan Ali to European Supermarket Melton Ltd. Companies house shows Ali and Rashid as directors |
| 21 st August 2018 | First Licence review hearing |
| 28 th August 2018 | Application to vary DPS to Mr Hazhar Omar Khudhur |
| 23 rd October 2018 | Application received to vary DPS to Mahmod Rezgar |
| 3 rd December 2018 | Application received to transfer licence to European Market Melton Ltd To the sole director on Companies house being Mr Jasim Abdulla Amin |
| 21 st May 2019 | Application received to vary DPS to Jasim Amin |
| 9 th September 2019 | Second Application to Review Premises Licence Application received from Trading Standards |

| | |
|---------------------------------|--|
| 10 th September 2019 | Consultation until 08 th October 2019 |
| 30 th October 2019 | Review hearing |

3.8 Policy & Guidance Considerations:

Members must consider all evidence / representations offered at the Sub-Committee Hearing. Members are reminded that whenever they make a decision under the Licensing Act 2003, they have a duty to act with a view to promoting the licensing objectives.

When considering any representations, only those issues relating to the four licensing objectives should be considered and appropriate weight given to the importance and relevance of each representation.

The application should be considered on its merits and any decision should be reasonable and proportionate.

In making any decision, Members must also have regard to the Council's own Statement of Licensing Policy and the Home Office statutory guidance issued under section 182 of the Licensing Act 2003 both of which can be found online at:

Policy:

http://www.melton.gov.uk/downloads/file/3903/statement_of_licensing_policy_-_licensing_act_2003

Guidance:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

3.9 Other Relevant Considerations:

The Sub-Committee is reminded of its responsibilities under the Crime and Disorder Act 1998 (to co-operate in the reduction of crime and disorder in the Melton Borough) and the Human Rights Act (which guarantees the right to a fair hearing for all parties in the determination of their civil rights, and also provides for the protection of property, which may include licences in existence, and the protection of private and family life) when considering the fair balance between the interests of the all parties to this Hearing. Any decision taken by the Sub-Committee must be necessary and proportionate to the objectives being pursued.

Members are reminded that whenever they make a decision under the Licensing Act 2003, they have a duty to act with a view to promoting the licensing objectives. When considering any representations, only those issues relating to the four licensing objectives should be considered and appropriate weight given to the importance and relevance of each representation.

Members should note that the applicant or persons making representations have the right of appeal against the decision made by the Sub-Committee.

3.10 Options available:

It is recommended that the Sub-Committee have regard to the application and any relevant representations and determine which of the following steps they consider appropriate for the promotion of the licensing objectives. On considering the merits of the application before them, the options available to the Sub-Committee are:

- g) Take no action;
- h) Modify the conditions of the Premises Licence, by altering, omitting and or adding to them where relevant;
- i) Exclude a licensable activity from the scope of the Premises Licence;
- j) Remove the Designated Premises Supervisor;
- k) Suspend the Premises Licence for a period not exceeding three months;
- l) Revoke the Premises Licence.

Where the Sub-Committee decide to take a step mentioned in (a) or (b) above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Otherwise the modification of conditions or the exclusion of a licensable activity will be permanent.

4.0 **Consultation and Feedback**

4.1 The consultation period commenced on Tuesday 10th September for 28 days ending on Tuesday 8th October 2019.

4.2 During this period, one further representation was made by the Licensing Authority itself (**Appendix D**).

5.0 **Next Steps**

5.1 Once a decision is made by the Sub-Committee, all parties will be notified of the decision within 5 working days.

5.2 The Sub-Committee should note that the applicant does have the right of appeal within 21 days of being notified of the decision

6.0 **Financial Implications**

6.1 There are no financial or other resource implications.

7.0 **Legal and Governance Implications:**

7.1 The Council is responsible for carrying out the licensing function under the Licensing Act 2003. The Act regulates the sale of alcohol, the provision of entertainment, the showing of film and late night refreshment

7.2 The Council has delegated its licensing function to its Licensing Committee, Sub Committees and Licensing Officers referred collectively to as the “Licensing Authority”.

7.3 Any decision must be taken following consideration of the representations received with a view to promoting the licensing objectives which are:

- Prevention of crime and disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

7.4 Any of the parties involved may, if they are unhappy with the outcome of this hearing, appeal to the Magistrates’ Court within 21 days of being notified of the decision.

8.0 **Equality and Safeguarding Implications:**

8.1 There are no equality implications arising from this report.

8.2 The safeguarding implications are outlined in the body of this report.

9.0 **Community Safety Implications:**

9.1 The Community Safety implications are detailed in the body of the report and associated appendices.

10.0 **Other Implications**

10.1 The Statement of Licensing Policy was prepared in accordance with the provisions of the Licensing Act 2003 and the Guidance issued by the Secretary of State under section 182 of the Act. The Council’s Policy was adopted by Council on the 12th December 2017. The Statement of the Licensing Policy is a live document, subject to review to meet the changing needs of the community, business circumstances and legislation.

11.0 Risk & Mitigation:

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|--|----------|--------------------------|-------------------------|-----------------------|-----------------------|---------------------------|
| L I K E L I H O O D | A | Very High | | | | |
| | B | High | | 1 | | |
| | C | Significant | | | 2, 3, 4 | |
| | D | Low | | | | |
| | E | Very Low | | | | |
| | F | Almost Impossible | | | | |
| | | | Negligible 1 | Marginal 2 | Critical 3 | Catastrophic 4 |

IMPACT

| Risk No | Risk Description |
|----------------|--|
| 1 | Local business who do pay correct tax affected by undercut pricing |
| 2 | Risk to public health if products are not produced under regulated conditions |
| 3 | Other licence conditions not being adhered to |
| 4 | It is important that due process is followed in considering this application to ensure that the correct decision is reached which could not be challenged on the grounds that the specified procedures have not been followed. |

Background Papers:

None

Appendices

Appendix A – Premises Licence Effective 12.05.2019

Appendix B – Plan of Premises

Appendix C – Trading Standard Application for Review of Premises Licence

Appendix Ci Trading Standards supporting evidence – schedule of alcohol seized

Appendix Cii – Trading Standards supporting evidence – photograph of some seized items

Appendix Ciii – Trading Standards supporting evidence – pre- assessment proposal for excise duty

Appendix Civ – Trading Standards supporting evidence – letter sent re unpaid excise duty

Appendix D – Licensing Authority Representation

Appendix E – Sub-Committee Review Application Decision – 21.08.19

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| Report Timeline: | |
| Director Approval : | 22.10.2019 |
| Legal Approval : | 21.10.19 |

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| Date of Review to make public (Exempt Reports only) | |
| N/A | |

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| Report Author & Job Title | |
| Sarah Flower – Licensing & Compliance Officer | |
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