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| **REPORT TO** | **ON** | |
| **Licensing Act Panel** | **27 November 2018** | |
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| **TITLE** | | **REPORT OF** | |
| **Review of Premises Licence:-Moss Lane Convenience Store** | | **Legal Services Manager/Interim Monitoring Officer** | |

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| Is this report confidential? | **No** |

1. **PURPOSE OF THE REPORT**

To provide an overview of the application and inform Members of the relevant parts of statute and guidance relating to the review application.

**2 CORPORATE PRIORITIES**

The report relates to the following corporate priorities:

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| Excellence and Financial Sustainability |  |
| Health and Wellbeing | x |
| Place | x |

Projects relating to People in the Corporate Plan:

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| People |  |

**3. RECOMMENDATIONS**

Members are requested to:

3.1 note the content of the report; and conduct the hearing in accordance with the hearing procedure and,

3.2 determine what steps are appropriate to promote the Licensing objectives.

**4. BACKGROUND TO THE REPORT**

4.1 On the 4th June 2018 the premises was visited by Mark Marshall in order to carry out a routine compliance check. Numerous matters were found and later communicated in writing to the licence holder, a summary of the problems were;

No Proof of Age Training available for Donna Bamber who had been employed at the premises for 1 month, fire separation issues and Work Place safety problems particularly in relation to flooring and storage areas.

4.2 At approximately 17.30 hrs on the 24th August 2018 a joint visit to the premises took place, by representatives from the Home Office, authorised to carry out Immigration Enforcement, Lancashire Fire and Rescue and Officers from the Licensing Authority.

On entry there was one male behind the counter. All officers were identified and an explanation of the reason for the visit was given. There was one customer waiting at the till point with items due to be paid for, the male behind the counter was NADEERA KAUSHIKA RUPASIGHE

Enquires were made by Home Office staff regarding RUPASIGHEs status and after about 10 minutes it had been revealed that he did not have rights to work in the UK. A search of the male’s mobile phone revealed text messages going back to December of 2017 which revealed that he had been employed at the shop since at least December 2017.

The licence holder RANGA RATNASEKERA was informed that she would be issued with a civil penalty for employing an illegal worker.

4.3 At 18.48hrs on the 7th September 2018 an underage volunteer was sent into the premises by a police constable to attempt to buy alcohol as part of a directed test purchase exercise.

The sale occurred and 4 cans of Strongbow (dark fruits) at a price of £5.50 were sold to the volunteer.

At 18.55hrs Mark Marshall returned to speak with the seller in the company of the Police Officer and a PCSO. The staff member was known to be Donna Bamber .

4.4 At 10.50hrs on the 10th September 2018 the premises was visited in order to check if staff training was in place which may provide a defence for the licence holder for the unlawful sale. Section 146 (6) of the Licensing Act 2003 states;

*Where a person (“the accused”) is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.*

If training records were in place, providing they were adequate this would have provided a due diligence defence, however the licence holder was unable to produce any documented training for staff. In addition the Premises licence also has a condition on the licence which states;

*All staff be trained regarding age related sales, details of which should be documented and produced on the reasonable request of any officer from a Responsible Authority*.**E+W**

**5 REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES**

5.1 The Home Office have submitted a written represenation attached as Appendix A.

**6. DECISION TO BE MADE BY THE LICENSING ACT PANEL**

**Determination of an application under Section 52 of the Licensing Act 2003**

6.1 Numerous paragraphs of the Section 182 Guidance are worthy of mention;

*11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*

*• modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*

*• exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)*

*• remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*

*• suspend the licence for a period not exceeding three months;*

*• revoke the licence.*

*11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.*

*11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:*

*• for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*

*• for the sale and distribution of illegal firearms;*

*• for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*

*• for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*

*• for prostitution or the sale of unlawful pornography;*

*• by organised groups of paedophiles to groom children;*

*• as the base for the organisation of criminal activity, particularly by gangs*

*for the organisation of racist activity or the promotion of racist attacks;*

*• for employing a person who is disqualified from that work by reason of their immigration status in the UK;*

*• for unlawful gambling; and*

*• for the sale or storage of smuggled tobacco and alcohol.*

*11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, 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.*

The Panel are asked to consider the seriousness of the issues disclosed and deal with this application by taking account of;

1. Its own policy; and
2. Secretary of State Guidance (section 182 of the Licensing Act 2003).

**8. Financial implications**

8.1 There are no direct financial implications arising from this report.

**9. LEGAL IMPLICATIONS**

9.1The Licensing Authority are under a statutory duty to facilitate the review hearing. When determining this hearing the Council must comply with the rules of natural justice. The decision taken by the panel should be appropriate and proportionate in addressing any undermining of the licensing objectives

Any party at the hearing has a right to appeal the decision to the Magistrates Court.

**10. COMMENTS OF THE STATUTORY FINANCE OFFICER**

**11. COMMENTS OF THE MONITORING OFFICER**

Please refer to the comments at 9.1.above

**12. OTHER IMPLICATIONS:**

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| * **HR & Organisational Development** * **ICT / Technology** * **Property & Asset Management** * **Risk** * **Equality & Diversity** | None  None  None  Please refer to the legal risks identified above.  None |

**13. APPENDICES**

Appendix A - Representation e mail received by the Home Office

Appendix B – Review Application and associated documents.

Appendix C - Current Premises Licence.

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| Report Author: | Telephone: | Date: |
| Chris Ward | 01772 625401 | 19 October 2018 |