

Public Document Pack

Date of meeting **Wednesday, 9th November, 2011**
Time **10.00 am**
Venue **Civic Offices, Merrial Street, Newcastle Under
Lyme, Staffordshire ST5 2AG**
Contact **Julia Cleary 01782 742227**

Licensing Sub-Committee

AGENDA

PART 1- OPEN AGENDA

- | | | |
|----------|---|------------------------|
| 1 | Report - Application for a Premises Licence Park Stores | (Pages 1 - 4) |
| 2 | Representations from Staffordshire Police | (Pages 5 - 10) |
| 3 | Representations from Interested Parties | (Pages 11 - 50) |
| 4 | Appendix B Human Rights Guidance Notes | (Pages 51 - 52) |
| 5 | Appendix A - Natural Justice Guidance Notes | (Pages 53 - 54) |
| 6 | Appendix C Procedure to be followed by the Sub-Committee | (Pages 55 - 56) |

Members: Councillors Tagg, Cornes and Mrs Williams

'Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting'

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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Agenda Item 1

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO THE LICENSING SUB-COMMITTEE

Wednesday 9th November 2011

APPLICATION FOR A PREMISES LICENCE

PARK STORES, KIDSGROVE

Details of Application

Applicants:	SHIV SINGH BAGHARIAN
Premises:	THE PARK STORES
Location:	Clough Hall Road, Kidsgrove, Stoke on Trent, Staffs, ST7 1AN
Application for:	PREMISES LICENCE

REQUESTED:

M Supply of Alcohol Off the Premises

Monday to Sunday 06.30 to 21.00

O Hours Premise is Open to the Public

Monday to Sunday 06.30 to 21.00

2. Steps proposed by applicant to promote the licensing objectives in respect of the application

General

Existing Health and Safety and Fire Safety.

The Prevention of Crime and disorder

The premise already has correct specification, internal and external CCTV recordings from which will be retained for 31 days. There are existing external frontage roller shutters and the premise is fully alarmed including a panic alarm button facility. The personal licence holder will ensure that any staff involved in the sale of alcohol are fully trained regarding their responsibilities under the Licensing Act 2003 including any changes of legislation and all staff will be trained in the usage and chronicled storage of CCTV. All written training records will be available on site for inspection at any time.

Public Safety

Premise will have fully maintained fire fighting equipment on site with a maintenance contract along with emergency lighting and smoke detectors.

The Prevention of Public Nuisance

The premise already has correct specification, internal and external CCTV which is a proven deterrent in terms of any anti-social activities in respect of the outlets frontage, the immediate vicinity of the premises and the access to the park which is closed mid-evening. It is not the applicants intention to trade after 21.00 hours out of respect to the residents who are also his neighbours. The applicant and his staff will at all times continue to retail responsibly and remain vigilant in relation to any premise litter issues.

The Protection of Children from Harm

The layout of the shop gives consideration to the prevention of under age access to alcohol and any alcohol displayed in the shop will not be obstructed from the view of the sales assistants. The Premise will operate a proof of age scheme through acceptable forms of identification and will incorporate the Challenge 25 system. A sales refusal book will be fully maintained and available for inspection at any time.

3. Consultation

(a) Responsible Authorities

There have been representations from:

- Staffordshire Police (Appendix A)

(b) There have been representations from interested parties living in the vicinity of the premise (Appendix B – Restricted).

4. Policy Considerations

(a) Licensing Objectives

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:-

- (i) the prevention of crime and disorder
- (ii) public safety
- (iii) the prevention of public nuisance
- (iv) the protection of children from harm

(b) Policy Statement

The Licensing Act 2003 required the Council to publish a "Statement of Licensing Policy" that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to this application:-

- I. Paragraph 2.9 Trading hours;
- II. Paragraph 4.4 Prevention of Crime and Disorder
- III. Paragraph 2.15 and 4.1 Public Safety
- IV. Paragraph 4.2 Prevention of Public Nuisance

(c) Statutory Guidance

- (i) National guidance regarding the control of areas outside the premises is laid down in paragraph 2.4 and 13.17; and
- (ii) National guidance regarding licensing hours is laid out in paragraphs 13.40 and 13.41.

Copies of the Council's Statement of Licensing Policy and the Government's Statutory Guidance will be available at the Sub-Committee meeting.

5. **Comments**

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own Statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider necessary for the promotion of the licensing objectives as set out in paragraph 4(a) above:-

- (a) Grant the application as requested
- (b) to reject or amend the application

The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

6. **List of Appendices**

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|-------------|---|
| Appendix A: | Guidance Notes – Natural Justice |
| Appendix B: | Guidance Notes – Human Rights |
| Appendix C: | Procedure to be followed by the Licensing Sub Committee |

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Agenda Item 2

PC Hana MIR
Licensing Unit
Stoke Police Station
Boothen Road,
Stoke on Trent
ST4 4AH

Contact:
Direct Line:
Fax:
Our ref.
Your ref.
Date: 22 September 2011

**SUBJECT: APPLICATION FOR A NEW PREMISE LICENCE AT :
THE PARK STORES, CLOUGH HALL RD, KIDSGROVE, STOKE ON TRENT ST7 1AN**

I refer to the letter received from Staffordshire Police regarding the application for a new premises licence at the above location. I agree to all the conditions outlined.

Yours Faithfully

Mr Shiv Singh BAGHARIAN
The Park Stores,
Clough Hall Road
Kidsgrove
Stoke on Trent
Staffordshire
ST7 1AN

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Keeping our communities
safe and reassured



Mr Shiv Singh BAGHARIAN
c/o The Park Stores
Clough Hall Road
Kidsgrove
Stoke on Trent
ST7 1AN

Contact: PC 0244 Hana MIR
Direct Line: 01785 232844
Fax: 01785 218705
Our ref.
Your ref.
Date: 22 September 2011

**SUBJECT: APPLICATION FOR A NEW PREMISES LICENCE
THE PARK STORES, CLOUGH HALL RD, KIDSGROVE, STOKE ON TRENT. ST7 1AN.**

In relation to the aforementioned application, the police would require the following conditions, to form part of the new licence.

CCTV

CCTV must be installed and operative and cover all public areas both inside and also any area immediately outside the entrance/exit to the premises. The CCTV unit shall be positioned in a secure part of the licensed premise and not within any private area of the location. Access to the system should be allowed immediately to the Police, Trading Standards or local authority officers, investigating crime and/ or disorder issues, upon request.

The CCTV system must be maintained so as to be fully operational and recording 24 hours every day.

Where the recording is on a removable medium (ie videotape, compact disc, flash card etc) a written record shall be kept every time images are recorded by CCTV and shall include details of the recording medium used, the time and date recording commenced and finished. This record shall identify the person responsible for the recording and shall be signed by him/her. A secure storage system to store those recording mediums shall be provided.

All images should be kept for a 28 day period and to be produced to the Police, Trading Standards or local authority officers in relation to the investigation of crime and/ or disorder issues, upon request or within 24 hrs of such request.

There will be notices displayed throughout the premise stating that CCTV is in operation.

The CCTV system clock should be set correctly and maintained (taking account of GMT and BST)

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There should be a member of staff available at all times who is trained and capable of operating the CCTV system and also down loading any footage required by the Police, local authority licensing officers upon request.

Daily checks to be made to check the operation of the CCTV system and confirm it is working correctly and such checks to be recorded in a register which is to be endorsed by the person conducting the check and to contain the name of the person conducting the check. This record is to be kept fully updated at all times and remain on the premises for immediate inspection by Police, Trading Standards or local authority licensing officers upon request.

The CCTV system shall be fully maintained in accordance with the manufacturers/ installers instructions and a record kept of the maintenance undertaken.

A CCTV monitor should be positioned by the till area showing real time footage from all of the cameras to allow the staff at the till to monitor any activities. This monitor should also be fully functional and operating at all times the premise is open to the public.

Yours faithfully,

Hana Mir

PC 0244 Hana MIR
Stoke on Trent Police Division
Stoke Police station
Boothon Road
Stoke on Trent
Staffordshire
ST4 4AH

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GUIDANCE NOTES

HUMAN RIGHTS ACT 1998

In considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

Rights and Freedoms to be considered when determining matters

ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NB Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence and the goodwill of a business.

NOTE In this context it is also particularly important for members to observe the rule against bias.

GUIDANCE NOTES

NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;
- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person (“reasonably informed bystander”) would consider that the interest might have an influence on the exercise of the decision-maker’s duties.

PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE

NOTE:

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

PROCEDURE:

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the interested party or the responsible authority which has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person
5. Members of the Sub-Committee will then have the opportunity to question that party or responsible authority.
6. Any person who has made relevant representations will then call any witness in support.
7. The applicant will then have an opportunity to question that witness.
8. Members of the Sub-Committee will then have the opportunity to question that person.
9. Stages 6 to 8 will then be repeated for each person making relevant representations.
10. The applicant will then have the opportunity to give evidence in response to the application and in response to the relevant representations which have been made.
11. The interested party or responsible authority will then have an opportunity to question the applicant.

Appendix C

12. Members of the Sub-Committee will then have the opportunity to question the applicant.
13. Stages 10 to 12 will be repeated for any witnesses on behalf of the holder of the applicant.
14. The interested party or responsible authority will have the right to address the sub committee.
15. The applicant will have the right to address the Sub-Committee in summing up his case.
16. All parties will then leave the room while the Sub-Committee consider their decision.
17. The Sub-Committee will normally make their determination at the conclusion of the hearing, but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held.