

**Item 7 Application for Review of a Premises Licence –
McColls, 3/7 Fleming Avenue, North Baddesley,
Southampton SO52 9EJ**

1 The application

- 1.1 The application is by Hampshire Constabulary requesting a Review of the Premises Licence for the premises known as McColls, 3/7 Fleming Avenue, North Baddesley, Southampton SO52 9EJ. The application is requested in accordance with the provisions of Section 51 of the Licensing Act 2003.
- 1.2 The premises benefits from a Premises Licence permitting supply of alcohol for consumption off the premises. A Premises Licence was first issued on 2 November 2005 (to be effective from 24 November 2005) allowing the sale of alcohol from 0800 to 2300 hours Monday to Saturday, 1000 to 2230 hours Sunday, 0800 to 2230 hours Good Friday and from 1200 to 1500 hours and 1900 to 2200 hours on Christmas Day. A copy of the existing licence is attached as Annex 1 to this report. The application for a Review requires the matter to be determined at a hearing.
- 1.3 The application requesting a Review relates to the following licensing objectives:-
- a) The prevention of crime and disorder.
 - b) Public safety.
 - c) The protection of children from harm.

A copy of the application and supporting document is attached as Annexes 2 and 3 to this report.

2 Background

- 2.1 The premises are an established convenience store of 1308 square feet located in Fleming Avenue in North Baddesley. The premises benefits from a Premises Licence as described in paragraph 1.2 above. Prior to 24 November 2005 the premises benefited from a Justices Off Licence permitting sale of alcohol during the hours detailed in paragraph 1.2 above.
- 2.2 In May 2006 an application was received and duly granted to change the Designated Premises Supervisor (DPS) from Penelope Marshall to Brenda Lawson. In August 2006 notification was submitted advising a change in name of the Premises Licence holder from Forbuoys Limited to Martin McColl Limited. In October 2006 notification was received advising a change of trading name of the premises from Forbuoys to McColls.

- 2.3 The current DPS, Brenda Lawson, has been so since May 2006. On 20 December 2006 the Premises Licence holder applied to vary the Licence by changing the DPS to an Ms N King. On 2 January 2007 the applicants withdrew this application. On the same date Hampshire Constabulary submitted an objection to this application on the basis that they had attempted to make contact with King and upon speaking to a member of staff at the premises were advised that King no longer worked for the applicants. Had the application not been withdrawn then this application would have proceeded to a hearing.
- 2.4 On 9 January 2007 the Premises Licence holder submitted a further application to change the DPS to a Michaelanne Tucker. Hampshire Constabulary again submitted an objection to this application on the grounds that the licensing objective of the prevention of crime and disorder would not be achieved. This was based on the fact that the Police had attempted to contact Tucker on two separate occasions but on both times she was not at the store. A lady working at the store on the afternoon of 16 January 2007 informed the Police that Tucker had been called in to cover from another shop in Bedford Place [Southampton] where she is the DPS. During the week commencing Monday 15 January 2007 Tucker was due to work at the premises on Tuesday 16, Wednesday 17 and Thursday 18 January from 0600 to 1400 hours. The Police felt that the times worked meant that the shop would not be managed during the afternoons or evenings, which the Police felt was not complying with the licensing objective of prevention of crime and disorder. As a result of this representation, the matter was due to go be determined at a hearing to be held on 8th February 2007. However, both the Police and the solicitors representing the Licence Holder agreed that that hearing should be dispensed with as the matter of the DPS would be considered as part of this Review hearing. Although the application to change the DPS has now been determined, the Police comments raised in their objection are still valid and the Police have asked that they be taken account of as part of the Review.
- 2.5 No other changes or revisions to the licence have taken place.
- 2.6 In both the original application for a Premises Licence and the application to vary the Designated Premises Supervisor, the following information is offered in respect of how the premises will meet the licensing objectives ... *Liquor is displayed within the retail area in such positions where it can be supervised by a combination of staff supervision and/or CCTV. The CCTV system forms part of the due diligence system operable at the store (tapes are maintained for a minimum of 31 days). The due diligence system also incorporates the operation of a refusals book together with general staff training providing guidance upon both the legal and social impact of the same. The parent Company also provides continual external support to this due diligence operation.*

3 Grounds for the Review

The applicant states the grounds for the review in their application and a supporting document which, as mentioned above, are attached as Annexes 2 and 3 to this report.

4 Relevant Representations – Responsible Authorities

- 4.1 **Hampshire County Council Trading Standards Service** – Does not wish to make a representation.
- 4.2 **Test Valley Borough Council Planning Service** – no comments.
- 4.3 **Test Valley Borough Council Environment and Health Service** – the Pollution Team have no comments to make in respect of the licensing objective of the prevention of public nuisance.

5 Relevant Representations – Interested Parties

- 5.1 J Bunyan – Supports the application for Review on the grounds that the supply of alcohol as currently permitted means that the licensing objective of prevention of crime and disorder is not being achieved.
- 5.2 Cllr Mrs A Tupper and Cllr Mrs C Dowden - Supports the application for Review on the grounds that the supply of alcohol as currently permitted means that the licensing objective of prevention of crime and disorder is not being achieved.

6 Policy Considerations

- 6.1 It is considered that the following extracts from the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 are relevant.

5.47 – Steps to promote the licensing objectives

5.99 – Reviews

5.107 – Powers of a licensing authority on the determination of a review

7.20 – Crime and disorder

7.31 – Public safety

7.47 – The protection of children from harm

12.1 – Sale and supply of alcohol to children

12.7 – Defences

12.10 – Allowing sale of alcohol to children

12.13 – Purchase of alcohol by or on behalf of children

12.16 – Consumption of alcohol by children

12.17 – Delivering alcohol to children

A copy of the Secretary of State's Guidance will be provided at the meeting for Members of the Committee. Additional copies can be obtained from the website of the Department of Culture Media and Sport.

- 6.2 It is considered that the following extracts from the Licensing Authority's own Statement of Licensing Policy are relevant to this application:

Section A: Prevention of Crime and Disorder

Section B: Public Safety

Section D: Protection of children from harm

The Statement of Licensing Policy is enclosed with a copy of this report for Members of the Committee. Additional copies will be provided at the hearing. Copies can also be obtained from the Licensing Section of the Administration Service or downloaded from the Council's website.

7 Observations

- 7.1 The Committee is obliged to determine this application with a view to promoting the four licensing objectives of prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. In making its decision, the Committee is also obliged to have regard to the national Guidance and the Council's own Statement of Licensing Policy. The Committee must also have regard to all of the representations made and the evidence it hears. The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:
- a) Modify the conditions of the Premises Licence, by altering or omitting or adding to them.
 - b) Exclude a licensable activity from the scope of the licence (although in the case of this licence this would be inappropriate as the sale of alcohol is the only licensable activity).
 - c) Remove the Designated Premises Supervisor.
 - d) Suspend the licence for a period not exceeding three months.
 - e) Revoke the licence.

The Committee is asked to note that it may not undertake any of the above steps merely because it considers it desirable to do so. It must actually be necessary in order to promote one or more of the licensing objectives:-

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The Committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent the Committee issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that the licensing authority will regard such a warning as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the Police have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, the Committee should not merely repeat that approach.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Application for a Review of Premises Licence number 153 for McColls, 3/7 Fleming Avenue, North Baddesley and all associated paperwork			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	5		
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Report to:	Licensing Sub Committee	Date:	20 th March 2007