

Agenda

Licensing Sub-Committee

Date: **Thursday 14 December 2023**

Time: **10.00 am**

Place: **Online Meeting/Conference Room 1, Herefordshire
Council Offices, Plough Lane, Hereford, HR4 0LE**

Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

Matthew Evans

Tel: 01432383690

Email: matthew.evans@herefordshire.gov.uk

If you would like help to understand this document, or would like it in another format, please call Matthew Evans on 01432383690 or e-mail matthew.evans@herefordshire.gov.uk in advance of the meeting.

Agenda for the Meeting of the Licensing Sub-Committee

Membership

Councillor Polly Andrews

Councillor Bruce Baker

Councillor Dave Davies

Agenda

PUBLIC INFORMATION

THE NOLAN PRINCIPLES

1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

2. NAMED SUBSTITUTES (IF ANY)

To receive any details of Members nominated to attend the meeting in place of a Member of the committee.

3. DECLARATIONS OF INTEREST

To receive declarations of interests in respect of Schedule 1, Schedule 2 or Other Interests from members of the committee in respect of items on the agenda.

4. EXCLUSION OF PUBLIC AND PRESS

In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1 Information relating to any individual.

RECOMMENDATION: that under Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the public be excluded from the meeting as it is considered that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

5. REVIEW OF A PREMISES LICENCE FOLLOWING AN EXPEDITED/SUMMARY LICENCE REVIEW IN RESPECT OF: RAZBARI, 156 EIGN STREET, HEREFORD, HR4 0AP CALLED BY WEST MERCIA POLICE- LICENSING ACT 2003

To consider an application for a review, following an expedited/summary licence review, of a premise licence in respect of Razbari, 156 Eign Street, Hereford, HR4 0AP called by West Mercia Police under the Licensing Act 2003

Pages

11 - 76

The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO: -

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

RECORDING OF THIS MEETING

Please note that the council will be making a recording of this public meeting. These recordings form part of the public record of the meeting and are made available for members of the public via the council's website.

To ensure that recording quality is maintained, could members and any attending members of the public speak as clearly as possible and keep background noise to a minimum while recording is in operation.

Please also note that other attendees are permitted to film, photograph and record our public meetings provided that it does not disrupt the business of the meeting.

If you do not wish to be filmed or photographed, please identify yourself so that anyone who intends to record the meeting can be made aware.

Please ensure that your mobile phones and other devices are turned to silent during the meeting.

The reporting of meetings is subject to the law and it is the responsibility of those doing the reporting to ensure that they comply.

Licensing Hearing Flowchart



**The Seven Principles of Public Life
(Nolan Principles)**

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Review of a premises licence following an expedited/summary licence review in respect of: Razbari, 156 Eign Street, Hereford, HR4 0AP called by West Mercia Police- Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Thursday 14 December 2023 @ 10:00hrs

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Hereford - Widemarsh

Purpose

To consider an application for a review, following an expedited/summary licence review, of a premise licence in respect of Razbari, 156 Eign Street, Hereford, HR4 0AP called by West Mercia Police under the Licensing Act 2003

Recommendation(s)

That:

The Sub-Committee when determining this review must consider:

- what steps it considers necessary for the promotion of the licensing objectives; and
- what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent.

They should give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives
- The Guidance issued to local authorities under Section 53A of the Licensing Act 2003 by the Violent Crime Reduction Act 2006 (Appendix 8)
- The Police application made in respect of the expedited review together with the Superintendent's Certificate (Appendix 1)
- The representations (including supporting information) presented by all parties, and
- The Herefordshire Council Licensing Policy 2020 - 2025

Reasons for Recommendations

Ensures compliance with the Licensing Act 2003 and the Crime & Disorder Act 2006.

Alternative options

1. There are a number of options open to the committee:
 - a) the modification of the conditions of the premises licence;
 - b) the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - c) the removal of the designated premises supervisor from the licence;
 - d) the suspension of the licence for a period not exceeding 3 months; and
 - e) the revocation of the licence

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Key considerations

2. The powers to call for an expedited review are contained in Section 53A of the 2003 Act by virtue of the Violent Crime Reduction Act 2006. The powers allow:
 - The police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and
 - The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

Applicant	West Mercia Police's Licensing and MATES Officer for Herefordshire.
Premise Licence Holder	CT INDIAN RESTAURANT LIMITED
Solicitor	Not known
Type of application:	Date received: 20.11.2023

Summary of Application

3. The application for an expedited review was received on 20 November 2023
4. This matter was brought before licensing sub-committee on 22 November 2023 (within the required 48 hours).
5. At that hearing the committee heard from West Mercia Police and a representative for the premises licence holder.
6. The Licensing sub-committee decided to suspend the licence with immediate effect until the date of the full hearing which was set for 14 December 2023 at 10:00hrs (appendix 2).
7. The Licensing Authority received written representation against the interim steps from a solicitor authorised to act on behalf of the premises licence holder on 29 November 2023 (appendix 3).
8. The matter was therefore brought once again before licensing sub-committee on 1 December 2023 (within the required 48 hours).
9. In response to the written representation, West Mercia Police served on the Licensing sub-committee information received from Immigration regarding the interview carried with the gentleman subject to the immigration offences (appendix 4).
10. At that hearing the committee heard from the solicitor acting on behalf of the premises licence holder, a representative for the premises licence holder and West Mercia Police.
11. The Licensing sub-committee decided to uphold their decision of 22 November 2023 to suspend the licence with immediate effect until the date of the full hearing which was set for 14 December 2023 at 10:00hrs (appendix 5).

Current Licence

12. The current licence (appendix 6) authorises the following licensable activities during the hours shown: -

Late Night Refreshment (Indoors/Outdoors)

Monday – Thursday 23:00 – 23:30

Friday & Saturday 23:00 – 24:00

Sale/Supply of Alcohol (For consumption on and off the premises)

Monday – Thursday 17:00 – 23:00

Friday & Saturday 17:00 – 23:30

Sunday 12:00 – 22:00

NB: Late Night Refreshment is only a licensable activity between the hours of Monday – Sunday 23:00 – 05:00

Summary of Representations

13. One (1) representation has been received from the Licensing Authority as a responsible authority (appendix 7).

Community impact

14. Any decision may have an impact on the local community.

Environmental Impact

15. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal environmental impacts for the council, as the licensing authority.

Equality duty

16. Under section 149 of the Equality Act 2010, the ‘general duty’ on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
17. There are no equality issues in relation to the content of this report.
 18. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee’s business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.

19. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Resource implications

20. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal resource implications for the council, as the licensing authority.

Financial implications

21. There are unlikely to be any financial implications for the council as licensing authority at this time.

Legal implications

22. As relevant representations have been received, the sub committee must determine the application under Section 3.5.7 (c) of the Herefordshire Council constitution. The representations must relate to the licensing objectives and the sub committee must determine the likely effect of the grant of the premises licences on the promotion of the licensing objectives.
23. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.
24. The sub committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
25. The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black. In this case it was summed up that: -
26. A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.
27. Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.
28. This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

29. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
30. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

31. Schedule 5 of the Licensing Act 2003 gives a right of appeal which states:
Decision to grant premises licence or impose conditions etc.
 - (1) This paragraph applies where a licensing authority grants a premises licence under section 18.
 - (2) The holder of the licence may appeal against any decision—
 - (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
 - (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).
 - (3) Where a person who made relevant representations in relation to the application desires to contend—
 - (a) that the licence ought not to have been granted, or
 - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section, he may appeal against the decision.
 - (4) In sub-paragraph (3) "relevant representations" has the meaning given in section 18(6).
32. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

Risk management

33. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

34. All responsible authorities and members of the public living within Herefordshire.

Appendices

- Appendix 1 – Application Form for Expedited Review
- Appendix 2 – Hearing Decision Notice from 22 November 2023
- Appendix 3 – Written Representation against the interim steps (**EXEMPT** – paragraph 1, schedule 12A of the Local Government Act 1972: Information relating to any individual).
- Appendix 4 – Information submitted by West Mercia Police (**EXEMPT** – paragraph 1, schedule 12A of the Local Government Act 1972: Information relating to any individual).
- Appendix 5 – Hearing Decision Notice 1 December 2023
- Appendix 6 – Current Premises Licence
- Appendix 7 – Local Authority Representation (**EXEMPT** – paragraph 1, schedule 12A of the Local Government Act 1972: Information relating to any individual).
- Appendix 8 – Relevant pages of the Section 182 Guidance Background papers

Background papers

None identified.

Please include a glossary of terms, abbreviations and acronyms used in this report.

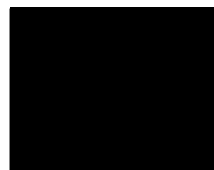
Designated Premises Supervisor - DPS

West Mercia Police
Herefordshire
Bath street
Hereford
HR1 1TA

CERTIFICATE UNDER SECTION 53A(1)(b) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime / ~~serious disorder~~ / ~~both serious crime and serious disorder~~¹

*Premises*²
Razbari Indian Resturant
156 Eign Street
Hereford
Herefordshire
HR4 0AP



Premises licence number (if known) ~~XXXXXXXX~~ P201990

Name of premises supervisor (if known) Usha BEGUM

I am a Superintendent³ in the West Mercia police force

I am giving this certificate because I am of the opinion that other procedures under the Licensing Act are inappropriate in this case, because⁴

On Thursday 16th November 2023, a joint agency operation was conducted at the above address. Intelligence suggested that exploitation was taking place at the premises. This involved potential immigration offences.

One member of staff from Bangladesh held permission to stay as a student with the condition he was permitted to work 20 hours a week during his course term.

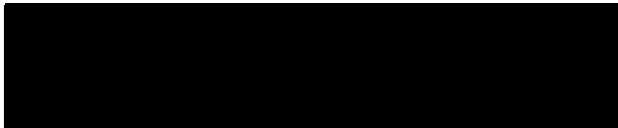
¹ Delete as applicable

² Include business name and address and any other relevant identifying details

³ Insert rank of officer giving the certificate, which must be superintendent or above

⁴ Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned

time He was arrested as he could not provide any evidence to support he was undertaking his studies in the UK and it was claimed by personnel present and the individual that he only worked 18 hours a week when spoken to on site However, when away from the restaurant he admitted he had been working full time (in excess of his permitted 20 hours during term time) since March 2023 and had not been to his university in Scotland since a similar date His permission to stay was cancelled with immediate effect and he was detained for his removal from the UK This premises has previously been found to employing illegal workers in Oct 2021



(Signed)

20/11/2023

(Date)

FORM FOR APPLYING FOR A SUMMARY LICENCE REVIEW

[Insert name and address of relevant licensing authority and its reference number (optional)]

Herefordshire Council
Licensing Section
Plough Lane
Hereford
HR4 0LE

Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime or disorder)

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I PC [REDACTED] - Police Licensing
[on behalf of] the chief officer of police for
the West Mercia police area apply for the review
of a premises licence under section 53A of the Licensing Act 2003.

1. Premises details:

Postal address of premises, or if none or not known, ordnance survey map reference or description:

**Razbari Indian Restaurant
156 Eign Street**

Post town: **Hereford**

Post code (if known): **HR4 0AP**

2. Premises licence details:

Name of premises licence holder (if known): **CT INDIAN RESTAURANT LIMITED**

Number of premises licence holder (if known): **PR01990**

3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for the police area above that in his opinion the above premises are associated with serious crime or disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)

4. Details of association of the above premises with serious crime, serious disorder or both:

[Please read guidance note 2]

The premises is an Indian restaurant and takeaway based on Eign Street, Hereford, which is near the City Centre.

On Thursday 16 November 2023, a joint agency operation involving West Mercia Police, Immigration, Herefordshire Council Licensing, Herefordshire Council Housing and Hereford & Worcester Fire and Rescue took place, where a visit was made to the premises regarding intelligence received that exploitation was taking place at the premises, which involved potential immigration offences.

At the time, who West Mercia believed to be the designated premises supervisor, Usha Begum was not present. The premises was open and was undertaking licensable activities - including the sale of alcohol.

One member of staff from Bangladesh held permission to stay as a student with the condition he was permitted to work 20 hours a week during his course term time.

He was arrested as he could not provide any evidence to support he was undertaking his studies in the UK.

It was claimed by personnel present and the individual that he only worked 18 hours a week when spoken to on site, however, when away from the restaurant he admitted he had been working full time (in excess of his permitted 20 hours during term time).

He had been doing this since March 2023 and had not been to his university in Scotland since a similar date.

His permission to stay was cancelled with immediate effect and he was detained for his removal from the UK.

This premises (albeit under different ownership) has previously been found to employ illegal workers in Oct 2021

Additionally it is believed that there is substantial financial gain and benefit to the premises licence holder for the employment of people in these circumstances

Signature of applicant:



Date: 20 November 2023

Capacity: Police Licensing Officer

Contact details for matters concerning this application:

[REDACTED] - Licensing and MATES Officer (Herefordshire)
Hereford Police Station,
Bath Street, Hereford HR1 2HT
[REDACTED]

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both.

**LICENSING SUB-COMMITTEE DECISION NOTICE
(THE LICENSING ACT 2003)**

PREMISES	Razbari Indian Restaurant, 156 Eign Street, Hereford, HR4 0AP
PREMISES LICENCE HOLDER	CT INDIAN RESTAURANT LIMITED
APPLICANT'S NAME	PC Dean Wall – Police Licensing Officer on behalf of the Chief Officer of Police for the West Mercia Police Area
APPLICATION TYPE	Expedited licence review
PANEL MEMBERS	Councillor Polly Andrews (Chairperson) Councillor Bruce Baker Councillor Dave Davies
DATE OF MEETING	22 November 2023

Members of the Licensing Sub-Committee of the council's Planning and Regulatory Committee considered the above application, full details of which appeared before the members in their agenda and the supplement published on 22 November 2023.

Prior to making their decision the Licensing Technical Officer presented the report which outlined the options available to the Sub-Committee and members heard representations from PC Dean Wall, the Police Licensing Officer and the representative of the Premises Licence Holder, Mr MD Siddikur Rahman Suhag.

PC Dean Wall, representing West Mercia Police, outlined their reasoning for requesting the expedited review and suspension of the premises licence for Razbari which included: concerns about serious crime at the premises, namely exploitation and the employment of workers who had no legal right to work in the United Kingdom.

Mr MD Siddikur Rahman Suhag referred to the supplement that had been circulated in advance of the meeting. In summary, he explained to the Sub-Committee that the business carried out checks on new employees and ensured that contracts of employment took account of any restrictions associated with residence permits.

Having carefully considered those matters brought before them and in reaching their decision, the Members had full regard to both the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the Guidance Issued under Section 182 and Herefordshire Council's statement of licensing policy.

DECISION

The sub-committee's decision was to suspend the licence with immediate effect as an interim step until the full review was held.

**LICENSING SUB-COMMITTEE DECISION NOTICE
(THE LICENSING ACT 2003)****REASONS**

The Licensing Sub-Committee had heard from the Licensing Technical Officer, West Mercia Police, as the applicant for the expedited review, and Mr MD Siddikur Rahman Suhag who confirmed he was authorised to speak on behalf of the Premises Licence Holder.

The members of the Sub-Committee noted that West Mercia Police, together with other agencies, had conducted a co-ordinated operation in relation to potential immigration offences and further noted the information contained within the application for an expedited review made by West Mercia Police. They also noted the request of West Mercia Police was to suspend the licence.

The members of the Sub-Committee also carefully considered and noted the evidence submitted on behalf of the Premises Licence Holder and the representations made by Mr MD Siddikur Rahman Suhag.

The members of the Sub-Committee felt that, at this stage, West Mercia Police's representations were both compelling and credible.

Therefore the decision of the Sub-Committee was to suspend the licence as an interim step until the full review was held. This would take effect immediately. The Sub-Committee considered that this action was both appropriate and proportionate to promote the licensing objectives and in particular to prevent the undermining of the prevention of crime and disorder licensing objective.

The matter would be further considered at a review hearing on 14 December 2023 at 10:00 a.m.

ADDITIONAL INFORMATION

- 1 The Sub-Committee is required to review the premises licence in full within 28 days of the application for an Expedited Licence Review made on 22 November 2023.
- 2 The review has been set for 14 December 2023 at 10:00 a.m.
- 3 There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.
- 4 The act allows the Premises Licence Holder to make representation against the interim steps by sending written notification to the Licensing Authority.
- 5 In such case the authority must hold a hearing within 48 hours to consider whether to maintain, remove or modify the interim steps.

INTERIM STEPS PENDING REVIEW

If the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.

Document is Restricted

Document is Restricted

**LICENSING SUB-COMMITTEE DECISION NOTICE
(THE LICENSING ACT 2003)**

PREMISES	Razbari Indian Restaurant, 156 Eign Street, Hereford, HR4 0AP
PREMISES LICENCE HOLDER	CT INDIAN RESTAURANT LIMITED
APPLICANT'S NAME	PC Dean Wall – Police Licensing Officer on behalf of the Chief Officer of Police for the West Mercia Police Area
APPLICATION TYPE	Expedited licence review
PANEL MEMBERS	Councillor Polly Andrews (Chairperson) Councillor Bruce Baker Councillor Dave Davies
DATE OF MEETING	1 December 2023

Members of the Licensing Sub-Committee of the council's Planning and Regulatory Committee considered a representation received on behalf of the licence holder, full details of which appeared before the members in their agenda and two supplements published on 30 November 2023 and 1 December 2023.

Prior to making its decision the Licensing Technical Officer presented the report which outlined the options available to the Sub-Committee and members heard representations from representatives of the Premises Licence Holder, Mr MD Siddikur Rahman Suhag and Mr Musthak Ahmed and PC Dean Wall, the Police Licensing Officer.

Mr Musthak Ahmed and Mr MD Siddikur Rahman Suhag introduced the evidence provided in their request for an interim review of the suspension of the licence. It was explained to the Sub-Committee that the witness statement given by the employee of Razbari was inconsistent with the statements from the Police and Immigration Service circulated in the supplements. Without cross-examination of the detail contained in all the statements, it was not possible to establish the correct record of events. The licence holder had undertaken all necessary pre-employment checks. The licence holder was prepared to comply with additional conditions to allow for a resumption of the licence.

PC Dean Wall, representing West Mercia Police, explained that the additional statements from the Police and Immigration Service substantiated the initial evidence provided by the Police. The Police objected to additional conditions to allow for the resumption of the licence which should remain suspended.

Having carefully considered those matters brought before them and in reaching their decision, the Members had full regard to both the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the Guidance Issued under Section 182 and Herefordshire Council's statement of licensing policy.

**LICENSING SUB-COMMITTEE DECISION NOTICE
(THE LICENSING ACT 2003)****DECISION**

The Sub-Committee's decision was to maintain the suspension of the licence as an interim step until the full review is held.

REASONS

The Licensing Sub-Committee has heard from the Licensing Technical Officer, West Mercia Police, Mr Suhag and the Premises Licence Holder's legal representative Mr Musthak Ahmed of Lawmatic Solicitors who has provided authority that he is instructed on behalf of the Premises Licence Holder.

The Sub-Committee has heard the submissions from the Licensing Technical Officer and noted the contents of the licensing report and attached documents.

The Sub-Committee has paid careful attention to the submissions of both Mr Suhag and legal representative Mr Ahmed and has carefully considered the further evidence submitted on behalf of the Premises Licence Holder, in particular the written representation and statement provided.

The Sub-Committee has considered the further supplementary evidence provided in the form of an interview transcript and statement.

The members of the Sub-Committee, having considered all the evidence together, felt that there was no persuasive reason at this stage to change the Sub-Committee's decision made on 22 November 2023.

Therefore the decision of the Sub-Committee is to maintain the suspension of the licence as an interim step until the full review is held. The Sub-Committee considered that this action was both appropriate and proportionate to promote the licensing objectives and in particular to prevent the undermining of the prevention of crime and disorder licensing objective.

The matter would be further considered at a review hearing on 14 December 2023 at 10:00 a.m.

ADDITIONAL INFORMATION

- 1 The Sub-Committee is required to review the premises licence in full within 28 days of the application for an Expedited Licence Review made on 22 November 2023.
- 2 The review has been set for 14 December 2023 at 10:00 a.m.
- 3 There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.
- 4 The act allows the Premises Licence Holder to make representation against the interim steps by sending written notification to the Licensing Authority.
- 5 In such case the authority must hold a hearing within 48 hours to consider whether to maintain, remove or modify the interim steps.

**LICENSING SUB-COMMITTEE DECISION NOTICE
(THE LICENSING ACT 2003)**

INTERIM STEPS PENDING REVIEW

If the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.

**LICENSING ACT 2003
Part A - Premises Licence**

Premises licence number PR01990 (App to Transfer)

Part 1 - Premises details

Postal address of premises, or if none, ordnance survey map reference or description Razbari 156 Eign Street	
Post town Hereford	Postcode HR4 0AP
Telephone number 01432 265440	

Where the licence is time limited the dates Not applicable
--

Licensable activities authorised by the licence Late Night Refreshment (Indoors/Outdoors) Sale/Supply of Alcohol (For consumption on and off the premises)
--

The times the licence authorises the carrying out of licensable activities <u>Late Night Refreshment</u> Monday – Thursday 23:00 – 23:30 Friday & Saturday 23:00 – 24:00 <u>Sale/Supply of Alcohol</u> Monday – Thursday 17:00 – 23:00 Friday & Saturday 17:00 – 23:30 Sunday 12:00 – 22:00
--

The opening hours of the premises Monday – Thursday 17:00 – 23:30 Friday & Saturday 17:00 – 24:00 Sunday 12:00 – 22:30
--

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies For consumption on and off the premises
--

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

CT INDIAN RESTAURANT LIMITED
156 Eign Street
Hereford
Herefordshire
HR4 0AP

Registered number of holder, for example company number, charity number (where applicable)

14057040

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Usha Begum

██████████
██████████
██████████

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Licence number: PL3508
Issuing authority: Herefordshire Council

Annex 1 - Mandatory conditions**Irresponsible Drinks Promotions**

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

Free Drinking Water

- 2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

Age verification

- 3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The 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 either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.

Small Measures

- 4. The responsible person must ensure that—
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

Below Cost Price

A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

Mandatory conditions where licence authorises supply of alcohol

No supply of alcohol may be made under the premises licence-

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (a) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Door supervision

Each individual required to carry out a security activity must be licensed by the Security Industry Authority

Annex 2 - Conditions consistent with the operating Schedule

Licensing objectives

General

Alcohol will only be supplied to customers seated at tables and ancillary to a table meal unless for takeaway, in which case it must be provided in a sealed container at the same time as the meal is provided.

Prevention of Crime & Disorder

CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition. Cameras shall encompass all ingress and egress to the premises, fire exits, outside areas, and all areas where the sale/ supply of alcohol occurs. A monitor shall be mounted on the wall at the premises where it is clearly visible to all members of the public. The monitor shall show the live CCTV footage being recorded. Equipment MUST be maintained in good working order, be correctly time and date stamped, recordings MUST be kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on demand. The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand. The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded. In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number 101 immediately.

All staff engaged in the sale of alcohol to be trained in responsible alcohol retailing to the minimum standard of BIIAB Level 1 or any equivalent training course within 1 month of commencing employment at the premises. Where there are existing staff this training shall be completed within 3 months of the date that this condition first appears on the licence. No person shall be authorised to sell or supply alcohol until this training is completed. Refresher training will be conducted at 12 monthly intervals. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand.

Only persons entitled to work in the UK may be employed at the premises, with employment records kept, which will be made available for inspection by the police or responsible authorities without delay at their request.

An incident log must be kept at the premises, and made immediately available on request to an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the Police, which must record the following: (a) all crimes reported to the venue (b) all ejections of patrons (c) any complaints received (d) any incidents of disorder (e) seizures of drugs or offensive weapons (f) any faults in the CCTV system or searching equipment or scanning equipment (g) any refusal of the sale of alcohol, including those unable to provide acceptable proof of age (h) any visit by a relevant authority or emergency service

Public Safety

An accredited First aid trained person must be on duty at all times when the premises operate for licensable activities.

A pre-opening check will be completed every day prior to opening the premises to the public, to ensure no slipping hazards nor tripping hazards are present, fire exits are clear, and further, any compromise to the safety of customers or staff is rectified prior to opening to the public that day.

Prevention of Public Nuisance

Noise or vibration shall not emanate from the premises so as to cause a nuisance.

The Premises Licence Holder or DPS must immediately comply with any request to adjust noise levels/ frequency spectra made by an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the Police.

Prominent, clear and legible signage shall be displayed at all exits to the premises requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

No waste such as bottles or refuse shall be placed outside the premises between 2200 hours and 0900 hours the next morning.

Protection of Children from Harm

Children under the age of 18 will not be permitted on the premises unless accompanied by an adult.

The premises shall operate a Challenge 25 Policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of an authorised person (as defined by Section 13 of the Licensing Act 2003) or the police or an authorised Trading Standards Officer of Herefordshire Council. Prominent, clear and legible signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any bar advertising the scheme operated.

A written register of refusals will be kept including a description of the people who have been unable to provide required Identification to prove their age. Such records shall be kept for a period of 12 months and will be collected on a daily basis by the Designated Premises Supervisor and produced to the police or an authorised person (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand.

No adult entertainment or services or activities must take place at the premises (Adult Entertainment includes, but is not restricted to, such entertainment or services which would generally include topless bar staff, striptease, lap-table, or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language).

Annex 3 - Conditions attached after a hearing by the licensing authority

Not applicable

Annex 4 - Plans

As attached – Drawing Number 5569-2-11 received 31.01.2022

**LICENSING ACT 2003
Part B - Premises licence summary**

Premises licence number PR01990 (App to Transfer)

Premises details

Postal address of premises, or if none, ordnance survey map reference or description Razbari 156 Eign Street	
Post town Hereford	Postcode HR4 0AP
Telephone number 01432 265440	

Where the licence is time limited the dates Not applicable
--

Licensable activities authorised by the licence Late Night Refreshment (Indoors/Outdoors) Sale/Supply of Alcohol (For consumption on and off the premises)
--

The times the licence authorises the carrying out of licensable activities <u>Late Night Refreshment</u> Monday – Thursday 23:00 – 23:30 Friday & Saturday 23:00 – 24:00 <u>Sale/Supply of Alcohol</u> Monday – Thursday 17:00 – 23:00 Friday & Saturday 17:00 – 23:30 Sunday 12:00 – 22:00
--

The opening hours of the premises Monday – Thursday 17:00 – 23:30 Friday & Saturday 17:00 – 24:00 Sunday 12:00 – 22:30
--

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies For consumption on and off the premises
--

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

**CT INDIAN RESTAURANT LIMITED
156 Eign Street
Hereford
Herefordshire
HR4 0AP**

Registered number of holder, for example company number, charity number (where applicable)

14057040

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Usha Begum

State whether access to the premises by children is restricted or prohibited

Children under the age of 18 will not be permitted on the premises unless accompanied by an adult.

The premises shall operate a Challenge 25 Policy

A written register of refusals will be kept including a description of the people who have been unable to provide required Identification to prove their age

No adult entertainment or services or activities must take place at the premises

Document is Restricted

12. Summary reviews

- 12.1 Summary reviews can be undertaken when the police consider that the premises concerned is associated with serious crime or serious disorder (or both). The summary review process, set out under sections 53A-53D of the 2003 Act, allows interim conditions to be quickly attached to a licence and a fast track licence review. The provisions were inserted by section 21 of the Violent Crime Reduction Act 2006 and amended by sections 136-137 of the Policing and Crime Act 2017, including the addition of section 53D.
- 12.2 The powers apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, or to premises operating under a club premises certificate. The powers are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives. The powers complement the general procedures in the 2003 Act for tackling crime and disorder associated with licensed premises and should be reserved for the most serious matters which cannot be adequately or otherwise redressed unless urgent action is taken. Separate powers in the Anti-social Behaviour, Crime and Policing Act 2014 provide for the instant closure of premises by the police in some circumstances (in essence, disorder or nuisance). The consequent review of premises licences by the licensing authority is provided for by section 167 of the Licensing Act 2003.

Application for summary review

- 12.3 Section 53A of the 2003 Act sets out who may apply for an expedited review and the circumstances in which it can be used. The application is made by, or on behalf of, the chief officer of police and must be made in the form which is set out in Schedule 8A to the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005/42).
- 12.4 The completed application must be accompanied by a certificate issued by a senior officer of the rank of superintendent or above. The certificate is a formal note which identifies the licensed premises and includes a signed statement by the senior officer that in his/her opinion the premises is associated with serious crime, serious disorder or both. This form is not prescribed in legislation. However, a sample form which forces may wish to adopt is published on gov.uk.
- 12.5 The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:
- (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
 - (b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- 12.6 There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under section 12 of the Public Order Act 1986 in which it is also

used.

12.7 In deciding whether to sign a certificate, the senior officer should consider the following (as applicable):

- The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises. It is not expected that this power will be used as a first response to a problem and summary reviews triggered by a single incident are likely to be the exception.
- The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?
- Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in Part 4, Chapter 3 of the Anti-social Behaviour, Crime and Policing Act 2014, or section 38 of and Schedule 6 to the Immigration Act 2016, to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power)?
- What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?

12.8 It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review. In appropriate circumstances the police might want to make representations to the licensing authority suggesting that they modify the conditions of the premises licence to require searches of customers for offensive weapons upon entry. Under the powers in sections 53A to 53D, this could be done on an interim basis pending a full hearing of the issues within the prescribed 28-day timeframe or for an appropriate period determined by the licensing authority.

12.9 Similarly, the power could, where appropriate, be used to reduce the risk of injury caused by glass by requiring the adoption of a safer alternative (but see paragraphs 12.15 and 12.16 below). However, it should always be borne in mind that the aim of the powers is to provide a selective tool, to be used proportionately.

The licensing authority and interim steps pending the review

12.10 Within 48 hours of receipt of the chief officer's application, the licensing authority must give the premises licence holder and responsible authorities a notice of the review and should include a copy of the application for review and a copy of the certificate, and must also consider whether it is necessary to take interim steps (place temporary conditions on the licence). When calculating the 48 hour period any non-working day can be disregarded¹¹.

¹¹ This means that, for example, if the application was received at 3pm on a Friday, the 48 hour period would cover the remaining 9 hours on that Friday and the remaining 39 hours starting on the Monday morning (provided it was not a bank holiday). In this case the licensing authority would have to decide on interim steps by 3pm on the Tuesday.

- 12.11 The licensing authority may want to consult the police about the steps that it thinks are necessary, pending the determination of the review, to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder. The licensing authority may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. This does not, of course, mean that the licensing authority *cannot* afford such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.
- 12.12 The determination of interim steps is not a matter that may be delegated to an officer of the licensing authority. The relevant decisions are likely to be taken by a licensing sub-committee rather than the full committee. It should also be noted that there is no requirement for a formal hearing in order to take interim steps. This means that the relevant sub committee members can communicate by telephone or other remote means in order to reach a decision. A written record should always be produced as soon as possible after a decision is reached.
- 12.13 The interim steps that the licensing authority must consider taking are:
- the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail from the scope of the licence;
 - the removal of the designated premises supervisor from the licence; and
 - the suspension of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

- 12.14 If the licensing authority decides to take steps at the initial interim stage:
- the decision takes effect immediately, or as soon after it as the licensing authority directs; but
 - the licensing authority must give immediate notice of its decision and its reasons for doing so to the holder of the premises licence and the chief officer of police who made the application. The 2003 Act does not specify that the immediate notice has to be in writing. However, in an individual case the licensing authority may consider that the need for immediate communication at least initially requires a non-written approach, such as a telephone call. This may happen when, for example, the authority decides that the decision should have immediate effect. In such a case, the decision and the reasons for it should be explained clearly and in full to the licence-holder (or someone who may properly act for the licence-holder), and the call followed up as soon as possible with a written version of the decision and the reasons (for example, by email or fax) which is identical to, or not significantly different from, the version given by telephone.
- 12.15 The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.
- 12.16 In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which

would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring.

Making representations against the interim steps

- 12.17 The premises licence holder may make representations against the interim steps taken by the licensing authority. There is no time limit for the premises licence holder to make representations on the interim steps, although in practice this would at some point be superseded by the full review which would have to be completed within 28 days of the application being received by the licensing authority. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt. When calculating the 48 hour period, any non-working day can be disregarded. Where the licensing authority has already held a hearing to consider representations against the interim steps, the holder of the licence may only make further representations if there has been a material change in circumstances.
- 12.18 The licensing authority must give advance notice of the hearing to the premises licence holder and the chief officer of police. Given that these measures are designed to deal with serious crime and/or serious disorder on an interim basis only, the process is designed to avoid delay and, as such, significant portions of the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) (which set out the usual processes governing the conduct of licensing authority hearings) do not apply in order to streamline the hearing process. One result of this is that the licensing authority cannot adjourn the hearing to a later date if the licence holder fails to attend at the scheduled time, as is the case under the normal review procedure. And as is the case with that procedure, the licence holder does not have to be present for the hearing to take place. In addition, there is no timescale for notifying the licence holder of the hearing under the modified process, providing the notification takes place before the hearing is held. However, it is imperative that the licence holder be given as much notice as is possible in the circumstances to afford the holder a maximum practicable opportunity to prepare for and attend the hearing. Licensing authorities should bear in mind that the usual principles of public law decision-making will apply to interim determinations, in a form that has regard to the statutory context of an expedited process.
- 12.19 At the hearing to consider representations against interim steps the licensing authority must:
- consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
 - determine whether to withdraw or modify the steps taken.
- 12.20 When considering the case the licensing authority must take into account:
- the senior officer's certificate that accompanied the application;
 - the chief officer's representations (if any); and
 - any representations made by the premises licence holder.

12.21 There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

The review of the premises licence under section 53C

12.22 The licensing authority must hold a full review of the premises licence and determine the review within 28 days after the day of receipt of the chief officer's application. There can be no adjournment of the hearing or delay in reaching a determination beyond the end of the 28 day period. This must take place even if the chief officer asks to withdraw his application or representations. At the review hearing, the licensing authority must consider what steps are appropriate for the promotion of the licensing objectives, consider any relevant representations, and review the interim steps already taken (if any).

12.23 In making its final determination the steps the licensing authority can take are:

- the modification of the conditions of the premises licence;
- the exclusion of a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months; and
- the revocation of the licence.

12.24 Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

12.25 The licensing authority must:

- advertise the review inviting representations from any persons for no less than seven consecutive days, by notice as described in regulation 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005/42) and, if applicable, on the licensing authority's website (see regulation 38(1)(b) of the above). The relevant notices should be published on the day after the day of receipt of the chief officer's application.
- advertise that any representations which the premises licence holder, responsible authority or any other person want the licensing authority to consider at the review hearing, should be submitted to the licensing authority within 10 working days of the advertisement of the review appearing.
- give formal notice of the hearing no later than five working days before the day or first day on which the hearing is to be held to the premises licence holder and to every responsible authority.

12.26 A party shall give to the licensing authority a notice no later than two working days before the day or the first day on which the hearing is to be held stating –

- whether he intends to attend or be represented at the hearing;
- whether he considers a hearing to be unnecessary.
- whether he would like permission for any other person (other than the person he intends to represent him at the hearing) to appear at the hearing and, if so, explain on which points that person will be able to contribute.

- 12.27 The regulations relating to hearings are set out in the Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005/44). They apply to final hearings under the section 53A(2)(b) in a similar way to hearings following closure orders under section 167 of the 2003 Act (it should be emphasised that the truncated version of the hearings regulations described in paragraph 12.18 above applies to interim hearings only). The issues they address include who can make representations and what those representations can be about. It is therefore possible for responsible authorities or any other persons to make representations in relation to any of the licensing objectives, not just crime and disorder. Similarly, where it is in the public interest, the regulations relating to the exclusion of individuals from hearings, or conducting the hearing in private, will apply.
- 12.28 The licensing authority must notify its decision and the reasons for making it to:
- the holder of the premises licence;
 - any person who made relevant representations; and
 - the chief officer of police who made the original application.

Review of the interim steps under section 53D

- 12.29 The licensing authority's determination does not have effect until the end of the 21 day period given for appealing the decision, or until the disposal of any appeal that is lodged (see below information on right of appeal). To ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn. The review of the interim steps should take place immediately after the determination under section 53C has been reached. In making its decision, the licensing authority must consider any relevant representations made.
- 12.30 In conducting the review of the interim steps the licensing authority has the power to take any of the steps that were available to it at the initial stage (see paragraph 12.13). Any interim steps taken at the review hearing apply until—
- (a) the end of the period given for appealing against a decision made under section 53C (21 days),
 - (b) if the decision under section 53C is appealed against, the time the appeal is disposed of, or
 - (c) the end of a period determined by the relevant licensing authority (which may not be longer than the period of time for which such interim steps could apply under (a) or (b) above).

Right of appeal against review of interim steps decision

- 12.31 The licence holder or the chief officer of police may appeal against the decision made by the licensing authority concerning its review of the interim steps to a magistrates' court. The appeal must be made within 21 days of the appellant being notified of the licensing authority's decision and must be heard by the magistrates' court within 28 days beginning with the day on which the appellant lodged the appeal.

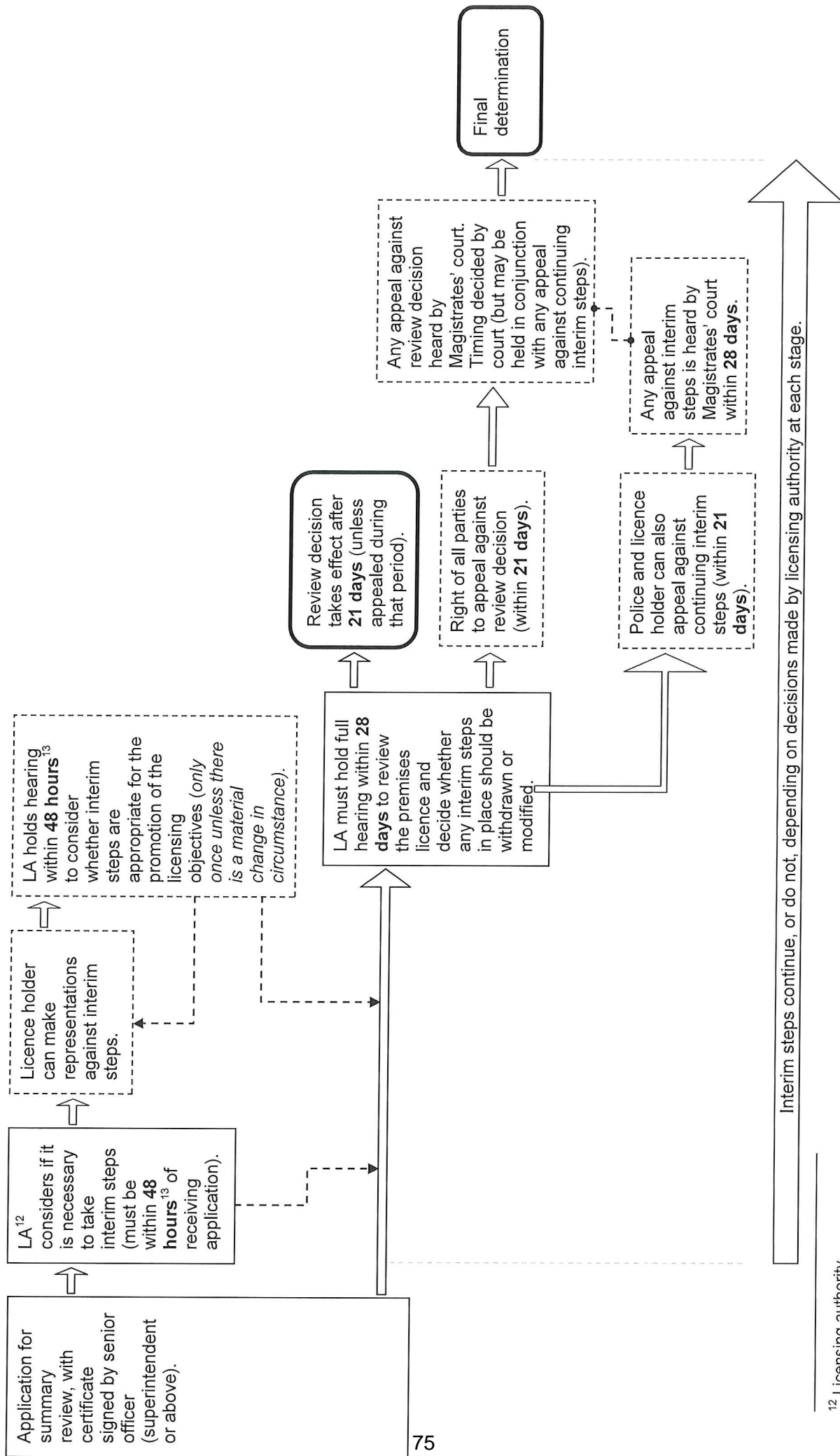
Right of appeal against final review decision

- 12.32 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.
- 12.33 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.
- 12.34 Where appeals are lodged both against the decision following the review of the interim steps and against the final determination, the courts may decide to consider the appeal against the final determination within the 28 day period, allowing the interim steps appeal to be disposed of at the same time.

Flow diagram of the summary review process

- 12.35 The following flow diagram summarises the process.

Summary review flowchart



¹² Licensing authority

¹³ Only working days count

