

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	29 APRIL 2014
TITLE OF REPORT:	APPLICATION FOR A REVIEW OF THE PREMISES LICENCE IN RESPECT OF 'INDIAN SUMMER, 9 HIGH STREET, ROSS ON WYE, HR9 5HL' – LICENSING ACT 2003
REPORT BY:	LICENSING OFFICER

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

Ross on Wye West

4. Purpose

To consider an application for a review of the premises licence in respect of 'Indian Summer, 9 High Street, Ross on Wye, HR9 5HL'.

5. Recommendation(s)

THAT

The Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- **The steps that are appropriate to promote the licensing objectives,**
- **The Guidance issued to local authorities under the Licensing Act 2003, and**
- **The Herefordshire Council Licensing Policy.**
- **The Police application for the review**
- **Any other evidence produced in relation to the review**

6. Key Points Summary

- The application requests a review (appendix 1) of the premises licence in order to promote the licensing objective of the prevention of crime.
- The premises were visited by the UK Border Agency as a result of intelligence received and a male was detained by them as an illegal immigrant.
- No representation was received in respect of the application
- No contact has been made by the premises licence holder
- The Licensing Authority wrote to the premises licence holder Mr Ali offering him the option of dealing with the matter by minor variation. Still nothing was heard from Mr Ali.

7. Options

There are a number of options open to the Sub-Committee:

- the modification of the conditions of the premises licence;
- to exclude 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;
- the revocation of the licence;
- to take no action

8. Reasons for Recommendations

To ensure compliance with the legislation.

9. Introduction and Background

Background Information

Applicant	Police Inspector N Semper – West Mercia Police – Hereford Police Station
Premise Licence Holder	Mr Awlad Ali
Solicitor	Not known

Type of application: Review	Date received: 5th March 2014	28 Days consultation 2nd April 2014
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The grounds for the review are:

The employment of illegal immigrants is viewed as a serious criminal activity and the guidance issued under Section 182 of the Licensing Act 2003, indicates that the review process should be used in order to prevent such activity.

The following information was supplied to support the review

At 1900hrs on Thursday 27 February 2014, as a result of intelligence, officers from the UK Border Agency attended a licensed premises known as the Indian Summer Restaurant, 9 High Street, Ross on Wye

The purpose of the visit was to check the right to UK residency and employment status of staff.

At the time of the visit the premises was open and customers were present.

On entering the premises one male ran away from them and was found a short time later hiding at the rear of the premises. It has been confirmed that this male was actually working as a waiter (and dressed accordingly) at the time of the visit. This male was detained and arrested as an illegal immigrant.

It is the view of West Mercia Police that the premises licence holder has failed to comply with his responsibilities with regard to checking the legal status of people prior to them being employed.

10. Current Licence

The current licence (appendix 2) authorises:

Sale by retail of alcohol (For consumption on the premises)
Monday-Saturday: 09:00 - 00:30
Sunday: 09:00 23:30

Late night refreshment
Monday-Saturday: 23:00 - 00:30
Sunday: 23:00 23:30

Non standard timings: None

Seasonal variations: None

Summary of Representations

- No representation has been received

11. Key Considerations

To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

The licensing objectives are:

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

12. Community Impact

The result of the review may have an impact on the Community.

13. Equality and Human Rights

No implications have been identified.

14. Financial Implications

There are unlikely to be any financial implications at this time to the authority.

15. Legal Implications

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.

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: -

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.

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.

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:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'. (Since the stated case, amendments have been enacted to the Licensing Act which replace the word necessary with appropriate. Members will need to give due consideration to the intended meaning of this change and give weight to the difference as they see fit. Whilst the wording of the judge cannot be altered, it may be useful for Members to read the advice by replacing the words necessary and proportionate with appropriate).

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

The Decision

The Act states that:

A determination under this section does not have effect—

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of

Right of Appeal

Schedule 5 gives a right of appeal which states:

Review of premises licence

- 8 (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
- (2) An appeal may be made against that decision by—
- (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application.
- (3) In sub-paragraph (2) “relevant representations” has the meaning given in section 52(7).

Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

16. Risk Management

No risks have been identified.

17. Consultees

Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.

A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.

The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days.

The notice was also displayed at the offices of the Licensing Authority at Blueschool House, Hereford.

A copy of the Review Application was also available to be viewed on the Herefordshire Council Website.

18. Appendices

1. Review Application Form
2. Copy of current licence

19. Background Papers

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

Background Information

HEREFORDSHIRE COUNCIL LICENSING POLICY states;

Section 18: Summary

This section explains who can call for a review of a premises licence and that The Licensing Authority will have expected the premises licence holder to have been consulted prior to the review being called. This section also deals with the action that the authority will take in respect of test purchases.

18 REVIEWS AND COMPLAINTS ABOUT LICENSED PREMISES.

18.1 Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives.

18.2 If a premise has an existing licence, a responsible authority or an interested party may apply to the Licensing Authority for a review of a Premises Licence or Club Premises Certificate. Once a review application has been lodged with the Licensing Authority any other responsible authority or interested party may make representations (within the legal deadline) to the Licensing Authority in relation to the premises. The licence holder of the premises may make representations against the review application. Review applications and subsequent representations can only be made on the grounds of one or more of the licensing objectives.

18.3 Review applications will be heard by the Licensing Authority's Licensing Committee or

Licensing Sub-Committee, who will determine the outcome of the Licence/Certificate after hearing and considering the application and the representations for and against it. Each case will be decided on its own merits, and the Licensing Authority may take several courses of action (e.g. take no action, revoke the licence, reduce the licensed hours etc) in accordance with the Act.

Guidance issued under Section 182 of The Licensing Act 2003 (relevant Sections)

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Powers of a licensing authority on the determination of a review

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health Officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

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

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

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

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review

hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Reviews arising in connection with crime

- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;
 - for the organisation of racist activity or the promotion of racist attacks;
 - for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
 - for unlawful gambling; and
 - for the sale of smuggled tobacco and alcohol.
- 11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.