

Committee: Licensing and Environmental Health Committee
Title: Application for the review of a premises licence - Indian Villa Thaxted
Report Author: Amanda Turner, Licensing Team Leader
aturner@uttlesford.gov.uk
Date: Wednesday, 21 August 2019

Summary

This report sets out an application for the review of the premises licence in respect of Indian Villa Restaurant, 20 Watling Street, Thaxted CM6 2PE. The review application has been received from Essex Police as a responsible authority.

The Indian Villa Restaurant is situated in the centre of the village of Thaxted. A plan showing the location of premise in the village is attached as Appendix D. It is licensed for the sale of alcohol, late night refreshment and regulated entertainment. The hours of this can be seen on their premises licence attached as Appendix C.

The Licensing Act 2003 places an obligation on a Licensing Authority to promote the four licensing objectives which are:

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

Recommendations

The review is determined

Financial Implications

None arising from this report

Background Papers

1. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

- (a) Premises Licence
- (b) Plan of Premises

- (c) Application for the review of a premises licence under the Licensing Act 2003 – received from Essex Police, Statutory Consultee
- (d) Licensing Act 2003
- (e) Revised Guidance issued under section 182 of the Licensing Act 2003
- (f) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

Impact

Communication/Consultation	The review notice has been displayed on the premises, Statutory consultees notified and application advertised on the UDC website.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	<p>Under Article 1 First Protocol to the European Convention on Human Rights everyone is entitled to peaceful enjoyment of their possessions which includes property. This right may be interfered with if necessary to control the use of property in accordance with the general interest. The imposition of conditions or the exclusion of licensable activities or revocation of a licence under the Licensing Act 2003 is a legitimate interference with this right in this context.</p> <p>In the event that the licence holder or anyone who has made relevant representations is dissatisfied with the decision of the committee there is a right of appeal to the Magistrates Court.</p>
Sustainability	None
Ward-specific impacts	Thaxted
Workforce/Workplace	None

Situation

- 1 The original application for a premises licence was granted on 18 November 2005. No representations were made to the application and it was granted as applied for.
- 2 In June 2017 there was an application to change the Designated Premises Supervisor. The Licensing Authority received a letter from the Police objecting to the proposed designated premises supervisor. At the commencement of the hearing on 31 July 2017 the premises licence holder advised the application was being withdrawn.
- 3 The Licensing Authority received an application for the review of a premises licence from Essex Police on the 5 July 2017 on the grounds of the prevention of crime and disorder. A hearing was scheduled to take place on 23 August 2017 but the premises licence holder surrendered the premises licence on 22 August 2017, and the Council's solicitor confirmed with no licence in place at the premises the review hearing should not take place as there was no licence to determine.
- 4 An application for a new premises licence was applied for in September 2018. No objections were received to this application so the licence was granted on 13 October 2018. Details of this licence (along with its hours and activities) can be seen on Appendix C.
- 5 The Council received an application for the review of the current licence in place from Essex Police on the 28 June 2019 on the grounds of the prevention of crime and disorder. The review application submitted by Essex Police is attached as Appendix A. Witness statements and evidence submitted with the application can be seen in Appendix B.
- 6 Essex Police are seeking a revocation of this premises licence based on the following licensing objective:
 - The prevention of Crime and Disorder

The grounds for review are that the crime and disorder objective has been undermined in that police officers discovered disqualified persons working illegally on the premises.

The statutory crime and prevention objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises. In particular, employing a person who is disqualified from work by reason of their immigration status is a criminal activity which, according to the Home Office Guidance to the Licensing Act 2003, should be treated particularly seriously.
- 7 A Notice of Review was issued by Uttlesford District Council's Licensing Department and delivered by the Council's Licensing Enforcement Officer on 1 July 2019. The Notice was displayed in the front window of the premises and details of the review have been advertised on the Council's website. The Notice advised of the grounds for the review and requested representations

should be made between 29 June and 26 July 2019 to Uttlesford District Council in writing.

- 8 All Statutory consultees were served a copy of the review application on 1 July 2019. No comments/representations have been received from other consultees during the 28 day consultation period.
- 9 One representation has been received during the 28 day consultation period from an interested party under the crime and disorder objective. This letter is attached as Appendix E identifying ongoing alleged public nuisance offences both criminal and antisocial.
- 10 The decision that the Committee can make for this review is to:
 - Allow the licence to continue unmodified
 - Modify the conditions of the licence
 - Modify the conditions of the licence for a period not exceeding 3 months.
 - Exclude a licensable activity from the scope of the licence
 - Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months.
 - Revoke a licence
 - Remove the Designated Premises Supervisor.
- 11 When carrying out a review of a licence, due regard should be given to the Council's licensing policy and Secretary of State Guidance issued under Section 182 of the Licensing Act 2003.
- 12 The Secretary of State's guidance issued in April 2018 includes new guidance in respect of immigration issues.
- 13 Paragraph 2.6 says 'The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises'.
- 14 Paragraph 4.22 highlights the importance placed on immigration offences, as it considers that it is grounds for objecting to the granting of a personal licence on the basis that it would be prejudicial to the prevention of crime and disorder.

- 15 Paragraph 8.99 says (although in respect of objections to the transfer of a premises licence, again highlights that it would be appropriate), ‘in exceptional circumstances for objections to be raised by the police or immigration officials where the transfer would be prejudicial to the prevention of illegal working.’
- 16 The following paragraphs of the Guidance are in respect of a review of the premises licence, where crime and disorder is an issue. It highlights the seriousness with which the Secretary of State expects licensing authorities to treat immigration offences on licensing premises.
- 17 Paragraph 11.18 says ‘Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.’
- 18 Paragraph 11.26 further says ‘Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.’
- 19 Paragraph 11.27 says ‘There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;
 - for the organisation of racist activity or the promotion of racist attacks;
 - **for employing a person who is disqualified from that work by reason of their immigration status in the UK;**
 - for unlawful gambling; and
 - for the sale or storage of smuggled tobacco and alcohol.’
- 20 Paragraph 11.28 says ‘It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to

deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.’

21 The Council’s licensing policy has the following relevant paragraphs

3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.

- The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.**

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour
- Illegal working

Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

- (a) Effective and responsible management of premises
- (b) Training and supervision of staff
- (c) Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- (d) Acceptance of accredited ‘proof of age’ cards e.g. PASS, locally approved ‘proof of age’ cards e.g. ‘Prove It’ and/or ‘new type’

driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)

- (e) Provision of effective CCTV and mirrors in and around premises
- (f) Employment of Security Industry Authority licensed doorstaff
- (g) Provision of toughened or plastic drinking vessels
- (h) Provision of secure, deposit boxes for confiscated items ('sin bins')
- (i) Provision of litterbins and other security measures, such as lighting, outside premises
- (j) Membership of local 'Pubwatch' schemes or similar organisations
- (k) Right to work checks on staff and retention of documents

22. If the Committee in their decision wishes to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation.

23. Secretary of State guidance provides in paragraph 10.8 and 10.10 the following guidance for members-

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
There may be further cases of illegal working at these premises	3. Members would need to take a view on the probability of further incidents taking place at these premises	The undermining of the licensing objective relating to the prevention of crime	The undermining of the licensing objective relating to the prevention of crime and disorder would be treated as a serious matter by the Licensing Authority, and consideration given to conditions or revocation of the licence

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.