

Committee: Licensing & Environmental Health

Agenda Item

Date: 6 December 2017

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Title: Application for the review of a premises licence under the Licensing Act 2003 – Razza, Temple Buildings, Braintree Road, Felsted. Essex. CM6 3DL.

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Item for decision:
yes

Summary

- 1 This report sets out an application for the review of the premises licence in respect of Razza, Temple Buildings, Braintree Road, Felsted. The review application has been received from Essex Police as a responsible authority.

Razza restaurant is situated in the centre of the village of Felsted. A plan showing the location of premise in the village is attached as Appendix 2. 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 3.

- 2 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

- 3 The review is determined

Financial Implications

- 4 None arising from this report

Background Papers

- 5 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
 (g) Representation e-mail from Home Office dated 9 November 2017

Impact

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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	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 under the Licensing Act 2003 is a legitimate interference with this right in this context. 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.
Sustainability	None
Ward-specific impacts	Thaxted
Workforce/Workplace	None

Situation

- 7 The original application for a premises licence was granted on 28 December 2012. No representations were made to the application and it was granted as applied for. A copy of the premises licence is shown in Appendix 3

The Council received an application for the review of this licence from Essex Police on the grounds of the prevention of crime and disorder. The review

application submitted by Essex Police which includes witness statements can be seen in Appendix 1.

Essex Police are seeking a revocation of this premises licence based on the following licensing objective:

The prevention of Crime and Disorder

No right to work checks are being carried out at the premises demonstrating a lack of prevention of crime and disorder.

- 8 A Notice of Review was issued by Uttlesford District Council's Licensing Department and delivered by our Licensing Enforcement Officer on 20 October 2017. The premises was closed at the time of delivery but the notice was displayed by the Enforcement Officer on the iron entrance gate at the entrance to the premises and details of this 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 Friday 20 October and Thursday 16 November to Uttlesford District Council in writing.
- 9 All Statutory consultees were served a copy of the review application. The Home Office have sent in a representation supporting the Police's version of events which can be seen in Appendix 4. No comments/representations have been received from the other consultees during the 28 day consultation period.
- 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 this year 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.'

- 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 These following paragraphs of the guidance are in respect of a review of the premises, 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 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.’

23 The Council’s existing licensing policy does not specifically make reference to immigration issues, but the new policy which takes effect on the 1 December 2017, does have 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

24 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.

25 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

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.