

Report of	Meeting	Date
Director of Customer and Digital	Licensing Act 2003 Sub Committee	7 th June 2018

REVIEW OF PREMISES LICENCE UNDER THE LICENSING ACT 2003 IN RESPECT OF TASTY BITES 106 PALL MALL CHORLEY (PLN0244)

PURPOSE OF REPORT

1. For Licensing Act 2003 Sub-Committee Members to determine the outcome of an application submitted by Lancashire Constabulary to review the above premises licence

RECOMMENDATION(S)

2. Members are recommended to consider the details contained in this report and any representations received by the premises licence holder PLN0244 and/or his representative to determine if any action is appropriate.

EXECUTIVE SUMMARY OF REPORT

3. On the 17th April 2018 an application for a review of the premises licence under the Licensing Act 2003 was received from Lancashire Constabulary acting in their capacity as a Responsible Authority. The reason for this application is given under the licensing objective for: The Prevention of Crime and Disorder, in that the premises were found to be employing illegal immigrants.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

4. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities	X	An ambitious council that does more to meet the needs of residents and the local area	

BACKGROUND

5. On the 17th April 2018 an application for a review of the premises licence under the Licensing Act 2003 was received from Lancashire Constabulary acting in their capacity as a Responsible Authority. The application is attached **See Appendix 1**. Mr Ismail Adam is the current holder of PLN0244. The premises licence is also attached **See Appendix 2**. At this time as required the Responsible Authorities were also informed of the Review Application.

6. On the 19th April 2018 a Notice of review of the premises licence was posted at the site for a period of 28 days during which representations could be made. **See Appendix 3.**
7. None of the Responsible Authorities or any other interested parties have submitted a representation during the consultation period.
8. The reason given to review the premises licence is undermining the Licensing Objectives for The Prevention of Crime and Disorder. **See Appendix 1.** The grounds of the application for review are stated as this venue is the source of an incident involving immigration offences which undermines the Licensing Objective Prevention of Crime and Disorder.
9. The Premises was first granted a licence in 2016 as Papa Adams to Mr Azimulla Dalvi.
10. An application was submitted on the 27th October 2016 to transfer the premises licence to Mr Ismail Adam, this was granted. **See Appendix 4.**
11. On the 19th October 2017 the Licensing Officer attended the premises with the Police and UKBA Officers. During this visit a male was arrested for being an over stayer in the country with no Visa allowing him to work.
12. The owner was subsequently served with a Notice of Prosecution after he admitted to the officers that he was employing the illegal overstayer (a male) and he had not carried out document checks to confirm the employee's right to work in the UK. .
13. This is a Home Office requirement that all employers must complete before employing a person.
14. Section 4 of the Licensing Act 2003 provides that a Licensing Authority must have regard to its Statement of Licensing Policy and the Guidance issued by the Secretary of State under Section 182 of the Act.
15. The Licensing Authority shall determine the application, having considered the representations that have been made, and having regard to its Statement of Licensing Policy and to the guidance issued by the Secretary of State under section 182 of the Act.
16. Section 52 of the Licensing Act 2003 is the authority the Licensing Sub-Committee can rely upon with regards to this matter which is reproduced below:

The Hearing is conveyed under the Licensing Act 2003 (Hearing) Regulations 2005.

14. Section 52 Determination of application for review of a Premises Licence
 - (1) This section applies where—
 - (a) the relevant licensing authority receives an application made in accordance with section 51,
 - (b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and
 - (c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.
17. Subsections 11.1 and 11.2 of guidance issued under section 182 of the Licensing Act 2003 state:-

'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.'

18. Under Section 51 (1) of the Licensing Act 2003, a responsible authority or other party may apply to the licensing authority for the review of a licence. The grounds for review must relate to one or more of the licensing objectives, which are:

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

19. Paragraph 2.6 of the 182 guidance clearly stipulates:

"The prevention of crime includes the prevention of immigration crime including illegal working on 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".

20. Paragraph 11.19 of the guidance states:

"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."*

21. Paragraphs 11.25 to 11.28 of the 182 guidance cover the review process in further depth:-

"11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 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.

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 employing a person who is disqualified from that work by reason of their immigration status in the UK;

11.28 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.”

22. The Councils Statement of Licensing Policy 2016 – 2018 states;

8.2 Review of licences

8.2.1 The procedure for reviewing premises licences and club premises certificates represents a key protection for the community where there is evidence to show that a specific concern exists relating to one or more of the licensing objectives.

8.2.2 The Licensing Authority expects responsible authorities and other persons to give early notice to licence holders of any concerns about problems identified at premises and of the need for improvement. It is expected that requests for a review of any licence or certificate will be sought only if such interventions have failed to resolve the matter or problem.

8.2.3 Representations must be made in writing and must be relevant. They must not be vexatious, repetitious or frivolous

IMPLICATIONS OF REPORT

23. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE MONITORING OFFICER

24. The powers available to the sub-committee are described in the body of the report.
25. The licence holder and the police both have a right of appeal against the decision of the licensing authority to the local magistrates' court within 21 days of notice of the decision.
26. The duty of the sub-committee to have regard to any relevant representations, national guidance issued by the Home Office under Section 182 of the Licensing Act 2003 and also to the Council's adopted licensing policy is referred to in the body of the report.
27. Aspects of the Human Rights Act 1998 are engaged, namely the right to a fair trial and the protection of property.

ASIM KHAN
DIRECTOR CUSTOMER AND DIGITAL.

Background Papers			
Document	Date	File	Place of Inspection
The Council's Statement of Licensing Policy	2016 - 2021	***	The Council's Statement of Licensing Policy
Secretary of State Section 182 Guidance	April 2018		Secretary of State Section 182 Guidance

Report Author	Ext	Date	Doc ID
Carl Gore	5726	17/5/2018	***