

REVIEW OF PREMISES LICENCE BAY LEAVES

Head of Service:	Rod Brown, Head of Housing & Community
Wards affected:	Ewell Court Ward;
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	Appendix 1 Bay leaves premises Licence Appendix 2 Application for review of premises licence Appendix 3 Representation from interested parties Appendix 4 Location Plan Appendix 5 Immigration Enforcement representation Appendix 6 Police representation Appendix 7 Representation in support Appendix 8 Karen James reasons for not withdrawing

Summary

The Licensing (Hearing) Sub-Committee (“the Sub-Committee”) is being asked to determine an application for review of a premises licence made under the Licensing Act 2003.

Recommendation (s)

Have regard to the application and relevant representations made during the consultation period, and to take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.

The steps are:

- a) to modify the conditions of the licence;**
- b) to exclude a licensable activity from the scope of the licence;**
- c) to remove the designated premises supervisor;**

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- d) to suspend the licence for a period not exceeding three months;
e) to revoke the licence;

1 Reasons for Recommendation

- 1.1 In carrying out its licensing functions, the Licensing Authority must have regard to its statement of licensing policy and any statutory guidance issued under s 182 of the Licensing Act 2003.

2 Background

- 2.1 The sale of alcohol and the provision of late night refreshment (the supply of hot food and hot drink between the hours of 11pm and 5am) are licensable activities under the Licensing Act 2003. Authorisation from the Council, in its role as licensing authority, is required to carry on the activity at a premises within the borough.
- 2.2 Under the scheme of delegation adopted by the Council the Sub-Committee is responsible for the exercise of many of the functions of the Council as a licensing authority, including determination of applications for review of premises licence.

3 Current position

- 3.1 The Bay Leaves Restaurant 364 Kingston Road, Ewell KT19 0DT is authorised under a premises licence to sell alcohol and provide late night refreshment for the following hours;

	SUPPLY OF ALCOHOL	PROVISION OF LATE NIGHT REFRESHMENT	THE OPENING HOURS OF THE PREMISES
MONDAY TO SATURDAY	10.00 - 00.00	23.00 - 00.00	10.00 - 00.30
SUNDAYS AND GOOD FRIDAY	12.00 -23.30	23.00 - 23.30	12.00 to 00.00
CHRISTMAS DAY	12.00 - 22.30	Not permitted	12.00 - 23.00

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- 3.2 The Licence holder is Alom Hussain, who has held the licence since 2010. Mr Hussain is also the designated premises supervisor for the premises. A copy of the premises licence including the plan of the premises is attached at Appendix 1.

4 Details of application

- 4.1 On Friday 9th December 2022 an application for review of the Bay Leaves premises licence was received digitally from the responsible authority for Home Office Immigration Enforcement. The application confirmed the applicant had served the application on the licence holder and all the responsible authorities. The application states the grounds for review are the belief that Mr Hussain is using his restaurant business to employ illegal workers thereby undermining the licensing objective of the prevention of crime and disorder. A copy of the application (showing the full grounds for review and supporting information) is attached at Appendix 2.
- 4.2 On Monday 12th December 2022 licensing officer contacted the licence holder to confirm he had received the application for review. Mr Hussain advised that he had received the e-mail from Home Office Immigration Enforcement, but had been unable to open the attachment, and had not yet received his copy of the application by post. With the agreement of the applicant and the licence holder, a Licensing Officer delivered a hard copy of the application to the premises the same day. As a result the 28 day period for representations started the day after the application was hand delivered to the applicant (the day the application was valid by virtue of being served on the applicant), making the last day for representation was the 9th January 2023.
- 4.3 Officers can confirm the licensing authority has advertised the review application as required on the Council website, public notice board and by displaying a note on the premises.

5 Representations

- 5.1 Five valid representations were received during the consultation period.
- 5.2 Two representations relate to the effect of noise problems from the premises on local residents. Copies of these representations are attached at Appendix 3. A map showing the location of the premises in relation to neighbouring business and residential properties is attached to Appendix 4.

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- 5.3 A further representation was submitted by Home Office Immigration Enforcement Alcohol and LNR Licensing Team, which details previous penalties issued with respect to the premises. A copy of this representation is attached at Appendix 5. This representation states that in 2016 the owner of the premises, Bayleaves (Gorment) Limited, was issued a fixed penalty notice for employing four persons with no right to work in the UK. The representation states that Mr Alom Hussain was a Director of this company at the time of this earlier fixed penalty notice. The address details recorded on companies house for this director matches the address details provided by the Mr Alom Hussain in the transfer application for the premises licence in 2010.
- 5.4 The police made representation to support the application for review, a copy of this representation is attached at Appendix 6.
- 5.5 One representation in support of the business was received, and a copy of this representation is attached at Appendix 7.

6 Adjournment of hearing

- 6.1 A licensing Sub-Committee was arranged to consider the application and representations on 25th January 2023. On 24th January 2023 the licence holder e-mailed the licensing authority to advise that due to ill health they would not be able to attend the hearing, and to request an adjournment of the hearing so they could oppose the revocation of the premises licence in person.
- 6.2 It was agreed by the Chair of the Sub-Committee that it was in the public interest to adjourn the hearing and it was rescheduled to 24th February.

7 Change of ownership

- 7.1 On 30th January 2023 an application was made to transfer the premises licence and vary the designated premises from Alom Hussain to Mosobbir Ali.
- 7.2 Home Office Immigration Officers were notified of the transfer application, and requested that the new owners provide copies of the documents relating to the sale of the business from Mr Hussain to Mr Ali.
- 7.3 On 8th February 2023 the applicant's agent provided copies of the Agreement for the sale of the business dated 5th January 2023. Home Office Immigration Officers were satisfied that everything appeared in order, and on 9th February requested the withdrawal of their application and representation.

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- 7.4 The police and one of the other interested parties also agreed to withdraw their representation as a result of change of licence holder at the premises. However, one of the interested parties (Karen James) did not agree that a hearing was no longer necessary. A copy of the e-mail explaining her reasons for not withdrawing her representation is attached as Appendix 8.
- 7.5 Although the applicant has requested the withdrawal of the application, the legislation does not allow the licensing authority to dispense with the need for a hearing unless all parties agree that a hearing is no longer necessary. However it submitted that the issues around the premises being associated with crime and disorder have now been addressed, and the only matter for the Sub-Committee to resolve relate to the single unwithdrawn representation relating to the prevention of public nuisance.

8 Policy Considerations

- 8.1 Section 4 of the Licensing Act 2003 stresses that in carrying out its functions, a licensing authority must “have regard to” guidance issued by the Secretary of State under Section 182. This implies looking at the guidance, factoring in its relevance and/or weight, if any, as those matters appear to the licensing authority. The Section 182 Guidance document was reissued by the Home Office in December 2022, however none of the updates effect the determination of review applications.

- 8.2 Paragraph 11.27 of the revised guidance states that

‘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; ...’*

- 8.3 Paragraph 11.28 continues;-

‘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.’

- 8.4 Should the Sub-Committee consider it appropriate for the promotion of the licensing objectives that the conditions of the premises licence should be modified, then Paragraph 2.5 provides the following guidance

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'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 evidence of a right to work check, either physical or digital (e.g. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises.'

9 Legal Implications

- 9.1 Decisions on licensing matters engage issues of human rights, in particular, Article 1 of the First Protocol, the peaceful enjoyment of possessions, Article 6, the right to a fair hearing, and Article 8, respect for private and family life. However, interference with Convention rights is permitted where lawful and necessary in the interests of public safety, the prevention of disorder or crime, the protection of health and morals or for the protection of the rights and freedoms of others.
- 9.2 Due regard must also be had to the public sector equality duty enshrined in Section 149 of the Equality Act 2010, which aims to eliminate unlawful discrimination, having regard to the nine protected characteristics. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.3 All applications for review of Premises Licences or Club Premises Certificates must be advertised by the display of a notice at the premises and by a public notice on the Council notice board, as well as on the Council's website. Pursuant to the Council's constitution the Council's licensing department has determined that there is a valid application that complies with the requirements of the Licensing Act 2003.

Legal Officer's comments:

When determining an application for a review of a premises Members may take any of the following steps they consider necessary to promote the licensing objectives:

- a. to modify the conditions of the licence;
- b. to exclude a licensable activity from the scope of the licence;
- c. to remove the designated premises supervisor;
- d. to suspend the licence for a period not exceeding three months;
- e. to revoke the licence; or,
- f. to take no action.

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Members are asked to note that they may not take any of the steps outlined above merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

Members should note the Guidance also suggests it is open to Members to issue an informal warning to the licence holder or to recommend improvement within a particular time. However the Guidance further provides that where responsible authorities have already issued such warnings, the issuing of another warning should not be repeated.

10 Background papers

10.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- [Code of Conduct and Practice in Licensing Procedures and Hearings](#)
- [Statement of Licensing Policy, dated 11 December 2018](#)
- [Revised Guidance Issued under Section 182 of the Licensing Act 2003](#)