

Licensing Sub-Committee

16/10/2017



Subject	Application for a review of the Premises Licence at Indian Ocean, 359 Staines Road West, Ashford TW15 1RP		
Purpose	For determination		
Report of	Deputy Chief Executive	Ward	Ashford Common
Contact	Lucy Hopkins, Licensing Enforcement Officer, 01784 444295		

Description and Location	<p>The Indian Ocean is a restaurant situated in a local shopping parade with residential properties above and nearby.</p> <p>A location plan is attached at Appendix A.</p>
The Application	<p>The application is to review the Premises Licence under the Licensing Objective for the prevention of crime and disorder and has been served by Home Office Immigration Enforcement.</p> <p>The current licence is attached at Appendix B. The review application is attached at Appendix C.</p>
Options	<ol style="list-style-type: none">1. The Sub-Committee is requested to consider the application for the review of a premises licence on its merits.2. Having had regard to the representations, the Sub-Committee must decide on one or more of the following options as it considers appropriate for the promotion of the licensing objectives:<ul style="list-style-type: none">• Modify the conditions• Exclude a licensable activity• Remove the Designated Premises Supervisor• Suspend the licence for up to 3 months• Revoke the licence• No action required

1. Background

- 1.1 Mr Masum Ahmed is both the Premise Licence Holder and the Designated Premises Supervisor of the Indian Ocean in Ashford. Mr Ahmed has held the Premise Licence since 14 May 2007.
- 1.2 Surrey Police notified the Council's Licensing team that they had encountered one immigration offender at the Indian Ocean on 15 July 2009.
- 1.3 Following receipt of the review application, the Council's Licensing Enforcement Officers ("LEOs") visited the premises on 24 August 2017. The LEOs discovered a number of non-compliances including failing to display the Summary of the Premises licence, failing to have the full licence available and failing display a notice under section 57 advising who the premises licence is under the control of. There were also two non-compliances in relation to licence conditions, in respect of a policy for the control of large groups and an age verification policy. All non-compliance issues have subsequently been rectified.
- 1.4 During the visit to the premises, Mr Masum Ahmed told the LEO that he had sold the business a couple of months before, however he was still working at the premises. To date, the Licensing team has not received an application to transfer the licence or to vary the licence to specify a new Designated Premises Supervisor (DPS).

2. Review Application

- 2.1 The application for the review of the premises licence was received on 22 August 2017. A copy of the review application is attached at **Appendix C**.
- 2.2 The application for the review relates to the licensing objective for the prevention of crime and disorder. The grounds for the review follow two occasions where the Home Office found people working at the premises who had no right to work in the UK.
- 2.3 The applicant has informed the Licensing team that on 23 March 2017, ten offenders were encountered, resulting in a civil penalty being raised for the sum of £80,000.
- 2.4 The applicant has explained to the Licensing team that the matter involving the offenders encountered in the enforcement visit conducted on 9 August 2017, is still being processed and is under consideration.
- 2.5 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.
- 2.6 The applicant copied the review application to the licence holder and the responsible authorities as required by the Act. The notice of review was displayed at the premises between 26 August 2017 and 23 September 2017

and in the reception area of the Council Offices as well as the Council's website. No representations were received as a result of this statutory process.

3. Licensing Policy

- 3.1 The Council's Statement of Licensing Policy has not been updated since the Immigration Act 2016 came into effect in April 2017. This is due to be revised in 2018 at which time the policy will reflect changes to the law in respect of immigration matters.

4. National Guidance

- 4.1 The relevant sections from the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 on determination of a Review can be found below in relation to Reviews arising in connection with crime:
- 4.2 Guidance note 11.24: "The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective."
- 4.3 Guidance note 11.27: "There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously." This list includes "employing a person who is disqualified from that work by reason of their immigration status in the UK."
- 4.4 Guidance note 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."

5. Making a decision

- 5.1 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and Spelthorne's Statement of Licensing Policy.
- 5.2 The Sub-Committee must give reasons for its decision.
- 5.3 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.
- 5.4 Conditions on licences must:
- be precise and enforceable;
 - be unambiguous;
 - not duplicate other statutory provisions;
 - be clear in what they intend to achieve; and,
 - be appropriate, proportionate and justifiable.

Appendices:

Appendix A – Location Plan

Appendix B – Current Licence

Appendix C – Review Application

Appendix D – Extract from National Guidance on Reviews

**Appendix E - Guidance for Licensing Authorities to Prevent Illegal Working in
Licensed Premises in England and Wales**