

LICENSING PANEL
23 April 2018

LICENSING ACT 2003
SANDHURST TANDOORI, 80 HIGH STREET, SANDHURST, GU47 8ED
APPLICATION FOR REVIEW OF A PREMISES LICENCE
(Chief Officer: Environment and Public Protection)

1 APPLICATION DETAILS

- 1.1 On 9 March 2018 an application was made by Home Office Immigration Enforcement for the review of the premises licence in respect of Sandhurst Tandoori, a restaurant at 80 High Street, Sandhurst, on the grounds that the licence holder is failing to meet the licensing objective of prevention of crime and disorder, as illegal working has been identified at this premises.
- 1.2 The application is attached at **Annex A** and the current licence at **Annex B**. The licence permits the sale of alcohol from 12:00 to 23:00 Sunday to Thursday and 12:00 to 00:00 on Friday and Saturday. The licence was first issued on 16 June 2009 to Mr Taj Miah, who is also the designated premises supervisor ('DPS') specified on the licence. The licence has not been transferred, nor has the DPS been varied since the licence was first granted. The licence was re-issued on 9 September 2013 to include additional mandatory conditions as a result of the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.
- 1.3 The premises operates as a restaurant and takeaway. A map showing the location of the restaurant is attached at **Annex C**.
- 1.4 The Licensing Authority is satisfied that this application for review meets the appropriate legislative requirements within the Licensing Act 2003 and is therefore a valid application to be considered by the Panel.

2 SUPPORTING INFORMATION

- 2.1 A series of immigration breaches as outlined below have led to the Home Office application to review the premises licence.
- 2.2 An enforcement visit was conducted on 11 November 2013. Two illegal workers were identified at the premises. A civil penalty was issued for £10,000 which remains unpaid. The redacted statements of officers can be found at **Annex D**.
- 2.3 An enforcement visit was conducted on 6 September 2017. Again, two illegal workers were identified at the premises. A civil penalty was issued for £20,000 which remains unpaid. The redacted statements of officers can be found at **Annex E**.
- 2.4 A further visit was conducted on 18 November 2017. For a third occasion, two illegal workers were identified at the premises. A civil penalty was issued for £15,000 which remains unpaid. The redacted statements of officers can be found at **Annex F**.
- 2.5 One further supporting document was received from Home Office Immigration Enforcement which can be found at **Annex G**.
- 2.6 Mr Miah responded in writing to the review application in a letter dated 15 March 2018. This letter is attached at **Annex H**.
- 2.7 In this letter, Mr Miah claims that he has only been running the business since January 2018. Mr Miah has held the premises licence for the business since June 2009, and his signed application for the licence can be found at **Annex I**. In addition the Council's food business records indicate that he has been managing the business since June 2009. **Annexes J, K and L** are food business registration forms signed by Mr Miah in

May 2009, March 2011 and August 2017. The signatures on all documents have been redacted for the purpose of the report, but they all match and signed copies are available for viewing by the panel if required.

- 2.8 Also within his letter, Mr Miah further claims that he was not aware of the incidents involving illegal workers. In respect of the visit to the premises on 6 September 2017, the statements in **Annex E** and the notes at **Annex G** confirm that Mr Miah attended the premises during the visit, was served with a notice, and was questioned by one of the immigration officers. During questioning Mr Miah admitted that one of the illegal workers was employed and paid £300 cash each week, and further admitted that he had not seen any documents to confirm the right of the individual to work in the UK. Further to this, one of the illegal workers gave a mobile phone number they had for 'the boss' who they named as 'Michel Bai' but on checking the Council's records, the mobile phone number given matches that given by Mr Miah when he called the Council on 9 March 2018 to query when his annual fee payment was due for his premises licence.

3 REPRESENTATIONS RECEIVED

- 3.1 No representations from the other responsible authorities or other persons were received during the period for making representations from 10 March to 7 April 2018.
- 3.2 A public notice was affixed to the exterior of the front window of premises on 9 March 2018 by an officer from the licensing team. When the premises was visited again on 15 March, it was noted that the notice had been removed. A new notice was affixed to the interior of the front window of the premises. A further check carried out on 27 March 2018 revealed the notice was still in place.

4 GUIDANCE

BRACKNELL FOREST COUNCIL STATEMENT OF LICENSING POLICY

- 4.1 The council will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which are:
- a) Prevention of crime and disorder;
 - b) Public safety;
 - c) Prevention of public nuisance; and
 - d) Protection of children from harm (1.7).
- 4.2 Within all licensed premises, whether or not alcohol is to be sold, the council will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained/instructed persons at the premises to ensure the proper management of the premises and of the activities taking place, as well as adherence to all statutory duties and the terms and conditions of the premises licence (16.2).
- 4.3 The council will normally expect the DPS to have been given the day-to-day responsibility for running the premises and as such it is expected that the DPS would usually be present at the licensed premises on a regular basis. The licence holder will also be expected to ensure that the DPS has experience commensurate with the size, capacity, nature and style of the premises and licensable activities to be provided. Where the DPS is not available at the premises for whatever reason, the Licensing Authority will expect his or her full contact details to be available at the premises and made known to at least one individual who will be present at the premises (16.4).

GUIDANCE UNDER SECTION 182 OF THE LICENSING ACT 2003

4.4 The licensing objectives – Crime and disorder

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 (4.6)

4.5 Home Office Immigration Enforcement acting as a responsible authority

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 (9.25)

4.6 Hearings

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- a) the steps that are appropriate to promote the licensing objectives;
- b) the representations (including supporting information) presented by all the parties;
- c) this Guidance;
- d) its own statement of licensing policy (9.38)

4.7 Determining actions that are appropriate for the promotion of the licensing objectives

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. (9.42)

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve (9.43).

4.8 The review process

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 (11.1).

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 (11.2).

4.9 Powers of a licensing authority on the determination of a review

The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives (11.16).

The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder (11.17).

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. 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 (11.18).

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- a) 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;
- b) 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);
- c) remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- d) suspend the licence for a period not exceeding three months;
- e) revoke the licence (11.19).

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review (11.20).

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual (11.21).

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives (11.22).

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of

up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence (11.23).

4.10 Reviews arising in connection with crime

A number of reviews may arise in connection with crime that is not directly connected with licensable activities... Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. 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 (11.24).

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 (11.25).

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 (11.26).

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 (11.27).

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 (11.28).

GUIDANCE FOR LICENSING AUTHORITIES TO PREVENT ILLEGAL WORKING IN LICENSED PREMISES IN ENGLAND AND WALES

4.11 Section 36 of and Schedule 4 to the Immigration Act 2016 amended the Licensing Act 2003 with the intention of preventing illegal working in premises licensed for the sale of alcohol or late night refreshment. The statutory prevention of crime objective in the Licensing Act 2003 includes the prevention of immigration crime and the prevention of illegal working in licensed premises (1).

Request for a review on immigration grounds

4.12 Home Office (Immigration Enforcement) may request that a licensing authority reviews an existing licence where it has concerns relating to the licensing objective of preventing crime and disorder, including immigration crime and preventing illegal working in licensed premises. This can include licences issued further to an application made before 6 April 2017. Such a request is likely to follow: (i) an enforcement operation ... that identifies an offence under any of the Immigration Acts is suspected of being committed in connection with the carrying on of the licensable activity...; or (ii) the issue of a civil penalty which is not cancelled following an objection or appeal... (4.1).

5 RECOMMENDATION

5.1 The panel may take such of the following steps as it considers appropriate for the promotion of the licence objectives:

- a) take no further action
- b) issue formal warnings to the premises supervisor and/or premises licence holder
- c) modify the conditions of the licence (including, but not limited to hours of operation of licensable activities)
- d) exclude a licensable activity from the scope of the licence
- e) remove the designated premises licence supervisor
- f) suspend the licence for a period not exceeding three months, and/or
- g) revoke the licence.

Where the panel takes a step mentioned in c) or d) may provide that the modification or exclusion is to have effect for a period not exceeding three months or permanently.

Background Papers

Licensing Act 2003 and the associated regulations

Guidance issued under section 182 of the Licensing Act 2003 (April 2017)

Bracknell Forest Borough Council Statement of Licensing Policy (January 2016)

Guidance for Licensing Authorities to prevent illegal working in licensed premises (April 2017)

Contact for further information

Laura Driscoll, Principal Licensing Officer – 01344 352517

laura.driscoll@bracknell-forest.gov.uk