

LICENSING PANEL
October 2019

LICENSING ACT 2003

S.S FOOD AND WINE LIMITED, MARKET STREET, BRACKNELL RG12 1JG
APPLICATION FOR REVIEW OF A PREMISES LICENCE

1 APPLICATION DETAILS

- 1.1 On 20 August 2019 an application was made by Thames Valley Police for the review of the premises licence in respect of S.S Food and Wine Limited, Unit 1 at Market Street, Bracknell, 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 premises licence at **Annex B**. The licence permits the sale of alcohol from Monday to Sunday: 07:00 to 23:00. The licence was first issued on 5 February 2015 to RP-Jai's Liquor Stores Ltd. The licence was transferred on 11 August 2018 to the current licence holder and designated premises supervisor ('DPS') specified on the licence. The licence was re-issued on 8 March 2019 following a change to the trading name from Bracknell Wines to S.S Food and Wine Limited.
- 1.3 The premises operates as an Off License situated on Market Street in Bracknell. Market Street is subject to a Public Space Protection Order. (PSPO) The DPS is Preet Singh Lamba, and he has been the DPS since 11 August 2015.
- 1.4 A map showing the location of the premises is attached at **Annex C**.
- 1.5 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.
- 1.6 The 28 day consultation period ran from 21 August 2019 to 17 September 2019. Members and the Parish Council were advised by email on the 29 August 2019. I can also confirm that the neighbour notification policy was implemented with letters being sent out on 30 August 2019.
- 1.7 I can confirm that the required site notices were displayed at the premises and in the public notice board at the main entrance to the council offices from the 21 August 2019. The notice were checked again on the 9 September by officers to confirm that they were still displayed as required.

2 SUPPORTING INFORMATION

- 2.1 A series of breaches as outlined below have led to Thames Valley Police's application to review the premises licence. Members of public and Police Officers in the early part of 2018 brought this premise to our attention following concerns raised over street drinkers on Market Street. Following an incident staff were not able to provide CCTV as requested by Thames Valley Police. This was in breach of the condition on the license. This report can be found at **Annex D** of this report.
- 2.2 Due to these reports Thames Valley Police Licensing Officer attend the premise on the 6 June 2018 to raise the issues with staff and get the staff to notify the owner. They were told that we received reports of street drinkers buying from the premises which was causing issues elsewhere, which in turn would have a knock-on effect to the premises, which was not good practice.

On 8 June 2018 the local council and Thames Valley Police, visited the premises as part of an evening operation, and it was noted that the part b (Premise Summary) was visible but only a single page. They were again warned about selling to street drinkers and advised to display the full part B summary.

On the 30 June 2018 intelligence from Thames Valley Police Town Centre advised a known street drinker was intoxicated and had purchased a bottle of Ace cider from Bracknell Wine can be found at **Annex E**.

- 2.3 On the 3 July Police Officers attended your premise to request CCTV an incident of disorder on Market Street. Staff present were not able to operate the system and although an assurance was given that the footage would be available by the 9 July. When officers returned only part of the required footage was made available and the remainder was never produced.
- 2.4 Thames Valley Police Licensing attended on 31 July 2018, spoke to staff as DPS was not at the premises, advice was given that when required CCTV must be readily made available. Further advice given about selling to street drinkers. A letter was sent to the DPS.

As a result, Bracknell Forest Council Licensing wrote to Mr Lamba on the 25 October outlining the breaches to the conditions of his licence this can be found at **Annex F**.

A further intelligence report was received concerning the sale of alcohol to intoxicated males on the 23 November 2018 at **Annex G** following this a letter dated 27 November 2018 was hand delivered to the premise reminding the DPS of his obligations to adhere to the Licensing Objectives at **Annex H**.

- 2.5 On the 3 January 2019 Police were called to Market Street as intoxicated males were being aggressive. Whilst at the premises other shop keepers show photos of males obtaining alcohol from Bracknell Wine (now known as S.S Food and Wine Ltd). (URN754/03JAN). As a result, Licensing requested by letter a meeting at Bracknell Police Station on the 19 February 2019. The DPS failed to attend this meeting. Andy Dean phoned the DPS who advised he had moved address and had failed to notify Licensing. The meeting was re arranged for 7 March 2019. At this meeting the DPS agreed to some voluntary changes to his conditions to protect himself from allegations of alcohol sales to street drinkers at **Annex I**.
- 2.6 Thames Valley Police returned to your premise on the 11 June and although some matters had been addressed a number were still outstanding. As you were not at the premise a letter dated 13 June was sent clearly setting out the outstanding items and the possible consequences should you not address these matters at **Annex J**.
- 2.7 A further visit on the 21 June 2019 from Thames Valley Police and Bracknell Forest Council confirmed that none of the outstanding matters have been addressed. Thames Valley Police attended again on the 11 July 2019 and still the outstanding matters have not been addressed.
- 2.8 Bracknell Town Centre Police team have kept a log of incidents involving street drinking at **Annex K** which highlights the ongoing issues within the Town Centre. Whilst all incidents cannot be put down to Bracknell Wine, in our opinion those marked with a * are incidents where there is a high probability that the alcohol was purchased at Bracknell Wine.

- 2.9** Thames Valley Police are of the opinion which is borne out by the facts above that Mr Lamba is incapable of managing a License Premise. He has shown that he is not willing to ensure that his paperwork is correctly displayed as per the Licensing Act 2003 requires. He appears not willing to support Police in managing the issues around street drinkers and Anti- Social Behaviour and he is certainly not in specific areas preventing crime and disorder.

Thames Valley Police in this circumstance have no option but to request that this Premises License is revoked.

3 REPRESENTATIONS RECEIVED

- 3.1 I can confirm representation were received from Trading Standards - Responsible Authority on the 10 September 2019 supporting Thames Valley Police review of the premises licence. No representations were received from the other responsible authorities or members of the public. **Annex L.**

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).

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)