

Waverley Borough Council

Report to: Licensing Sub-Committee C

Date: 03 July 2023

Ward(s) affected: All Godalming Wards

Report of Director: Community Wellbeing/Place/Transformation & Governance

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Report Status: Open

**Licensing Act 2003 – Application for
review of a Premises Licence – The
Rajasthan Restaurant, 103 Long Gore,
Farncombe, Godalming, Surrey
GU7 3TW**

1. Executive Summary

- 1.1 An application to review the Premises Licence for the Ragasthan Restaurant, 103 Long Gore, Farncombe, Godalming, GU7 3TW under section 51 of the Licensing Act 2003 has been submitted by Home Office (Immigration Enforcement). No other relevant representations have been received.

2. Recommendation to Council

It is recommended that the Sub-Committee determine the application.

3. Reason(s) for Recommendation:

- 3.1. To address the application for review received as required by the Licensing Act 2003. The general principle is that an application for a Review of a Premises Licence must be considered once received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
- 3.2. The Sub-Committee must consider the application on its individual merits and take into account all relevant matters, then determine the application by taking the steps it considers appropriate and necessary / proportionate to promote the licensing objectives. Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:
 - To modify or impose additional relevant conditions (ie to alter, omit or add any new condition) to such an extent as is considered necessary for the promotion of the licensing objectives (in relation to matters raised by this review);
 - To exclude one or more of the licensable activities from the scope of the Premises Licence
 - to remove the Designated Premises Supervisor;

- to suspend the premises licence for not more than three months
 - to revoke the premises licence to continue in its present form, with or without a written warning
- 3.3. The Licensing Members are also reminded of the option to issue a 'yellow card' i.e. a warning as to future conduct which may accompany options 1 to 4 above.
- 3.4. The Licensing Authority may decide that no action is appropriate if it finds that the Review does not require it to take any steps that are appropriate to promote the licensing objectives.

4. Exemption from publication

- 4.1. No

5. Purpose of Report

- 5.1. The purpose of the report is to enable the Sub-Committee to determine an application from Home Office (Immigration Enforcement) for a review of the Premises Licence for the Rajasthan Restaurant, 103 Long Gore, Farncombe, Godalming, GU7 3TW under section 51 of the Licensing Act 2003.

6. Strategic Priorities

- 6.1. Waverley promotes a strong, resilient local economy, supporting local businesses and employment and the health and wellbeing of our communities. Waverley's strategic priorities are supporting a strong, resilient local economy and improving the health and wellbeing of our residents and communities.

7. Background

Grounds for review

7.1. Home Office (Immigration Enforcement) have applied for the review of the premises licence for the purposes of promoting the licensing objectives in relation to the prevention of crime and disorder. The application to review the premises licence relates to the following licensing objectives;

- the prevention of crime and disorder

In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working.

A copy of the application for review is summarised as follows:

Home office (Immigration Enforcement) believe that the Premises Licence holder of the Rajasthan Restaurant is not preventing crime and disorder and therefore should no longer be allowed to hold a premises licence.

Illegal working has been identified which is strictly prohibited under the Licensing Act 2003 and Immigration Act 1971.

Employing illegal workers in the UK has the following impact on the community and society as a whole:-

- a. It deprives HMRC and the Government of revenue by non-payment of tax and national insurance.
- b. It exploits the undocumented by paying less than the minimum wage and provides no employment or income protection.
- c. It encourages other overstayers/illegals to seek similar work.
- d. It allows a business to unfairly undercut other businesses by employing cheap labour.

- e. Illegal workers are often housed in cramped and unsatisfactory conditions by the employer as part of their working arrangement.

Details of premises Licence

7.2 The premises applied for a premises licence in September 2006. The application was advertised and in accordance with the Licensing Act 2003 the licence was granted after a 28 day period having received no objections.

- 7.3. A copy of the Premises Licence is attached (Annexe 1) and summarised below:

Provision of regulated entertainment:-

Recorded Music;

Friday & Saturday 1200 – 1430

Sunday 1700 –2300

Sale by Retail of Alcohol

Monday - Saturday 1200 – 1430

Sunday 1700 - 2300

Hours of opening:

As per the sale of alcohol.

- 7.4. In accordance with the legislation, the applicant has sent copies of the application to responsible authorities and was advertised in accordance with the requirements of the Licensing Act 2003 and notification was made to the licence holder and responsible authorities. The review documents were sent to the licence holders. The consultation period for the review ended on 12 June 2023.

Application for a Review of the Licence

- 7.5. An application for review of this premises licence has been made by Home Office (Immigration Enforcement) as a responsible authority. The application has been advertised at the premises by the Licensing

Authority, and elsewhere in accordance with the Licensing Act 2003. A copy of the review notice is attached at Annexe 2, giving a deadline date of 12th June 2022 for any representations to be submitted to the Licensing Authority. The application for a review is set out in full at Annexe 3.

- 7.6. The applicant for the review (Home Office (Immigration Enforcement)) and the subject of the review, (The Rajasthan) may call witnesses in support of any evidence they may give, having first notified the Licensing Authority of their intention to do so.

Other Responsible Authorities - Responses to the Notice Procedure

- 7.7. No representations have been received from other responsible authorities in respect of the application.

Interested Parties - Responses to the Notice Procedure

- 7.8. No representations have been received from ‘other persons’, in respect to the application.

Statutory Guidance

- 7.9. Statutory Guidance issued under Section 182 of the 2003 Act, published in December 2022, regarding determining a Review (Paragraphs 11.1- 11.28).

The guidance will be available for reference purposes at the meeting.* Particular attention is drawn to:

- Reviews — paragraphs 11.1-11.28
- The Licensing Objectives — paragraphs 2.1-2.32
- Hearings — paragraphs 9.31 to 9.44

The guidance can be found at:

<https://www.gov.uk/government/publications/explanatory-memorandumrevised-guidance-issued-under-s-182-of-licensing-act-2003>

Policy and statutory considerations

7.10. When determining the application, the committee must have regard to and take steps to ensure :the promotion of the licensing objectives which are

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

As well as:

- The Licensing Act 2003
- The adopted statement of licensing policy (August 2018 to July 2023) - with headed paragraphs 6, (prevention of crime and disorder) and 15 (complaints/review of licence) being relevant to this application:
- The current statutory guidance issued by the Home Officer in accordance with section 182 of the Act:
- The representations, including supporting information presented by all the parties; and
- The human rights of all the parties concerned to ensure both a fair and balanced hearing and to consider the Equality Act 2010 public sector equality duty requiring public bodies to have due regard to the need to:
 - Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act:
 - Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
 - Foster good relations between people who share a protected characteristic and people who do not share it.

The Statutory Guidance provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 11.1 - "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."

Paragraph 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."

Paragraph 11.10 - "Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the Steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation."

Paragraph 11.16 - "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." In reaching a decision upon a review application, the guidance offers assistance to the licensing authority as follows:

Paragraph 11.17 - "The licensing authority may decide that the review does not require it to take any further steps appropriate to promote 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."

Paragraph 11.18 - "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."

Paragraph 11.19 - "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."

Paragraph 11.20 - "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."

Paragraph 11.21 - "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."

Paragraph 11.22 - "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."

Paragraph 11.23 - "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."

Paragraph 11.26 - "Where a 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 objections and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder."

Paragraph 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 licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;

- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

Paragraph 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".

A copy of the Statement of Licensing Policy, current statutory guidance and the Act will be made available for reference at the hearing.

8. Consultation

- 8.1. The application has been dealt with in accordance with the requirements of the Licensing Act 2003

9. Key Risks

- 9.1. There are no specific implications arising from this report.

10. Financial Implications

- 10.1. There are no immediate resource implications in this report; resources required to fulfil the Council's duties in respect of the licensing process are met from the existing budget.

11. Legal Implications

11.1. The Council has a duty to determine the application under the Licensing Act 2003. A decision of this Committee can be subject to appeal in accordance with section 181 and schedule 5 of the Licensing Act 2003.

12. Human Resource Implications

12.1. There are no additional human resource implications

13. Equality and Diversity Implications

13.1 None

14. Climate Change/Sustainability Implications

14.1. There are no implications arising from the recommendations contained within this report in terms of meeting the Council's climate change obligations.

15. Summary of Options

15.1 The general principle is that an application for a Review of a Premises Licence must be considered once received unless subsequently withdrawn. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

The Sub-Committee must consider the application on its individual merits and take into account all relevant matters, then determine the application by taking the steps it considers appropriate and necessary / proportionate to promote the licensing objectives. Having considered all relevant representations, and having taken into

account the promotion of the licensing objectives, a decision can be taken:

- 1. To modify or impose additional relevant conditions (ie to alter, omit or add any new condition) to such an extent as is considered necessary for the promotion of the licensing objectives (in relation to matters raised by this review);
- 2. To exclude one or more of the licensable activities from the scope of the Premises Licence
- 3. to remove the Designated Premises Supervisor;
- 4. to suspend the premises licence for not more than three months
- 5. to revoke the premises licence to continue in its present form, with or without a written warning

16. Conclusion

16.1 The Committee is asked to consider the report and determine the application.

17. Background Papers

17.1 The Licensing Act 2003 (legislation.gov.uk)

Licensing Act 2003 Revised guidance (December 2022) issued under section 182 of Licensing Act 2003 - GOV.UK (www.gov.uk)

Waverley's Revised Statement of Licensing Policy 2018 (waverley.gov.uk)

18. Appendices

18.1 Annexe 1 – A copy of the current Premises Licence.

18.2 Annexe 2 – A copy of the review notice.

18.3 Annexe 3 – A copy of the application for a review.

Please ensure the following service areas have signed off your report.
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Service	Sign off date
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CMB	
Executive Briefing/Liaison	
Committee Services	