

24 January 2019

Licensing and Appeals Committee

**Licensing Sub-Committee Hearing in respect of an
Application to Review a Premises Licence
Licensing Act 2003**

THE RAJ, 21 KINGS ROAD, BRENTWOOD CM14 4DJ

Report of: Dave Leonard – Licensing Officer

Wards Affected: Brentwood West

This report is: Public

1. Executive Summary

- 1.1 An application has been received from Mr Peter Jones on behalf of the Chief of Essex Police to review the premises licence at **The Raj, 21 Kings Road, Brentwood CM14 4DJ**. The review application alleges a failure by the premises licence holder, Mr Badsha Miah, to promote the Licensing objective in relation to the Prevention of Crime and Disorder.

2. Recommendation(s)

- 2.1 That the Sub Committee:

Considers this report and appendices together with any oral submissions at the hearing and determines the application for the review of the premises licence

3. Introduction and Background

- 3.1 An authorisation is required in respect of any premises where it is intended to conduct one or more of the four licensable activities, these being:
- Sale of alcohol
 - Supply of alcohol (in respect of a club)
 - Regulated Entertainment
 - Provision of Late-Night Refreshment

- 3.2 An appropriate authorisation is either, a premises licence, a club premises certificate or a Temporary Event Notice.
- 3.3 Licence holders are required, when offering any licensable activity, to ensure that they promote the licensing objectives at all times. The operating schedule of the application contains details of the activities applied for and the control measures that the applicant will have in place in order to promote these objectives. Such measures will, where appropriate, be converted into enforceable conditions on any licence issued.
- 3.4 The four licensing objectives are;
- Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm
- 3.5 Any representation must be able to demonstrate that on the balance of probability the application in its current form will fail to adequately promote one or more of the licensing objectives. No other matters may be considered.

4. The Application

- 4.1 On 5th December 2018 an application for the Review of the Premises Licence was received from Mr Peter Jones (Essex Police Licensing Officer) on behalf of the Chief of Essex Police.
- 4.2 The review application alleges a failure by the premises licence holder, Mr Badsha Miah, to promote the licensing objective in relation to the prevention of crime and disorder and are seeking the revocation of the premises licence. This follows the attendance of Immigration Compliance & Enforcement (ICE) officers at ***The Raj, 21 Kings Road, Brentwood CM14 4DJ*** on Thursday, 20th November 2018 in which a number of persons made off but were detained by the Immigration Officers.
- 4.3 Five persons were found to have no right to work in the UK and no leave to remain in the UK and were subsequently detained.
- 4.4 A copy of the review application is attached as **Appendix 1**.
- 4.5 The application together with supplementary documentary information is attached at **Appendix 2**.

- 4.6 A copy of the current premises licence together with a premises plan, OS maps and images to assist the Sub-Committee have been attached as **Appendix 3**.
- 4.7 No other representations have been received in relation to this application.
- 4.8 On 7th December 2018, Mr Badsha Miah applied to transfer the premises licence to Mr Jetu Miah and on 17th December 2018, Essex Police submitted an objection to this transfer on the grounds of the prevention of crime & disorder.
- 4.9 A Licensing Sub-Committee hearing to determine the transfer application is set for Thursday, January 17th 2019 and any relevant outcome to this hearing will be provided by means of a verbal update.

5. Reasons For Recommendation

These are the options available to the Sub-Committee as provided in the Licensing Act 2003.

- 5.1 The Committee, after considering the review application and all of the relevant representations, will need to consider what action, if any, to take in order to ensure that the Licensing Objectives are complied with.
- 5.2 The following options are available to the Licensing Sub-Committee:
- Do nothing with the licence;
 - To modify the conditions of the premises licence. This can include adding new conditions or alterations to existing conditions e.g. reducing the hours of operation;
 - To exclude a licensable activity from the scope of the licence e.g. to exclude regulated entertainment after a certain hour,
 - To remove the Designated Premises Supervisor e.g. because it is considered that the problems are being caused by poor management;
 - To suspend the licence for a period not exceeding three months;
 - Revoke the licence.
- 5.3 The decision made by the committee will not take effect until the end of the period given for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.
- 5.4 In determining this application for review of the premises licence, the Sub-Committee should have regard to the Council's Statement of Licensing Policy and to the guidance issued by the Secretary of State under s182 of the Licensing Act 2003.

- 5.5 The Sub-Committee are advised that the hearing is a statutory exercise of power delegated by local residents to consider what the public interest requires. The licensing authority, via the Sub-Committee, has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure. Representations from all parties both written and verbal will form part of matters that are to be considered. Findings on issues of fact should be on the balance of probability.
- 5.6 The Sub-Committee are advised that the final decision should be based on the individual merits of the application and findings of fact made at the hearing.
- 5.7 The application must be determined within 5 working days of the conclusion of the hearing, in accordance with paragraph 26 of the Licensing Act 2003 (Hearings) Regulations 2005.

6. Consultation

- 6.1 This application has been consulted on in accordance with the requirements of Licensing Act 2003.

7. Statement of Licensing Policy

- 7.1 There are no specific issues arising from this application in relation to the Council's Statement of Licensing Policy.

8. Relevant Sections of the Secretary of State's Guidance

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 &, where other measures are deemed insufficient, to revoke the licence.

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.

9. Legal Considerations

- 9.3 In determining this application to transfer the premises licence, the Sub-Committee should have regard to the Council's Statement of Licensing Policy and to the guidance issued by the Secretary of State under s182 of the Licensing Act 2003.
- 9.4 The Sub-Committee are advised that the hearing is of a quasi-judicial nature and representations from all parties both written and verbal will form part of matters that are to be considered. Findings on issues of fact should be on the balance of probability.
- 9.5 The Sub-Committee are advised that the final decision should be based on the individual merits of the application and findings of fact made at the hearing.
- 9.5 Brentwood Council as Licensing Authority under the Licensing Act 2003 and subordinate legislation, is empowered to determine applications of this nature. Notice must be given of the Licensing Authority's decision on this matter. The decision could be subject to an appeal to a Magistrates Court, which can be instigated by either the applicant or the person who made the representation.

APPENDICES TO THIS REPORT:

- 1 - Copy of the Police Application to Review the Premises Licence
- 2 - Copy of the Police Supplementary Documentary Information
- 3 - Copy of the Premises Licence, Premises Plan, Location Map & images.

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