

LICENSING SUB-COMMITTEE

DATE 19 January 2021

REPORT OF Sharon Wroot – Executive Director for Environment, Economy & Growth

SUBJECT Review of Premises Licence in respect of premises known as **Spice of Life, 8 – 12 Wellowgate, Grimsby, DN32 0RA**

STATUS Open

CONTRIBUTION TO OUR AIMS

Stronger Economy:

Support for premises that promote the licensing objectives through appropriate action against those that do not.

Stronger Community:

Reduce incidence of crime, anti-social behaviour and public nuisance associated with licensed premises

Promotion of public safety and child protection in relation to licensed premises.

EXECUTIVE SUMMARY

The Licensing Authority under the Licensing Act 2003 (“the Act”) has a duty to determine applications for any Licence under the Act where relevant representations have been made. This includes reviews. This duty has been delegated to the Licensing Sub-Committee. This case involves an application for a review of a premises licence by **Home office Immigration Enforcement** who assert that:-

The Licence Holders, Mohammed Abdul Salique and Abdul Somir, are not promoting the licensing objective in relation to the Prevention of Crime and Disorder.

RECOMMENDATIONS

To determine the application for a review of the Premises Licence and consider any relevant representations under s.52 of the Act. To take such steps as considered **appropriate** for the promotion of the licensing objectives.

REASONS FOR DECISION

Must have regard to:-

- North East Lincolnshire Council’s Statement of Licensing Policy.
- Guidance issued by the Secretary of State under s.182 of the Act.

Steps taken must be **appropriate** for the promotion of the Licensing Objectives, namely:-

- the prevention of crime and disorder;
- public safety
- the prevention of public nuisance; and
- the protection of children from harm.

1. BACKGROUND AND ISSUES

These are fully contained in the report of Jo Bennett.

2. RISKS AND OPPORTUNITIES

Crime and Disorder – If the Sub-Committee finds this licensed premises has undermined the licensing objectives, it must consider what, if any, steps are appropriate to prevent this. If appropriate steps are not taken there is a risk that the licensing objectives will not be promoted.

Human Rights – The premises licence holder is entitled to a fair hearing; article 6 of the European Convention of Human Rights applies. Article 8, the right to respect for private and family life, also applies as the “licence” is crucial to the livelihood of the premises licence holder. The Human Rights of the wider community are also engaged.

Equality and Diversity – No direct effects

Value for Money – The aim must be to take action that prevents problems persisting and using further licensing resources.

The impact on the Social, Economic and Environmental well-being of the Borough – Action taken to ensure that all licensed premises promote the licensing objectives will have a positive impact in these respects.

Environmental Sustainability Implications - None

3. OTHER OPTIONS CONSIDERED

The steps which may be taken are:-

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence.

The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to 3 months. It may also be decided that no action is necessary and consideration given to whether a warning should be issued to the licence holder and/or recommend improvement within a particular period of time.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

There are potential positive reputational implications for the Council resulting from the decision where appropriate action has been taken. An action plan has been agreed with the Council's communications service covering information requirements and communications channels to be utilised.

5. FINANCIAL CONSIDERATIONS

This report relates to a determination required in response to an application made under the Licensing Act 2003. The process is governed by statutory regulations and the fees involved are statutory. There are no direct resource or funding implications in the first instance but there may be on appeal (see Section 5).

6. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not applicable

7. FINANCIAL IMPLICATIONS

The premises licence holder, the responsible authorities and any relevant person have a right of appeal against the decision made to the Magistrates and/or High Court. If the Licensing Sub-Committee takes a step which is considered unnecessary or unlawful by a higher court there is a risk that an award of costs may be ordered against the Council in favour of the successful appellant. Such costs are difficult to quantify or estimate.

8. LEGAL IMPLICATIONS

These are covered in the body of the report of the Licensing Officer.

9. HUMAN RESOURCES IMPLICATIONS

There are no Human Resource Implications.

10. WARD IMPLICATIONS

Park Ward

11. BACKGROUND PAPERS

Please refer to the index of Members Papers.

12. CONTACT OFFICER(S)

Jo Bennett, Licensing Enforcement Officer, Tel: 01472 326299

Sharon Wroot
Executive Director for Environment, Economy & Growth



LICENSING ACT 2003

REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF AN APPLICATION TO REVIEW A PREMISES LICENCE

***Spice of Life
8 – 12 Wellowgate
Grimsby
DN32 0RA***

NORTH EAST LINCOLNSHIRE COUNCIL
LICENSING AUTHORITY

LICENSING ACT 2003

Report to Licensing Sub-Committee
following receipt of an Application to Review a Premises Licence

1. Premises Licence Details -

- 1.1 Premises:**
Spice of Life, 8 – 12 Wellowgate, Grimsby, DN32 0RA
- 1.2 Premises licence holder:**
Mohammed Abdul Salique and Abdul Somir
- 1.3 Relevant licensable activity authorised by the premises licence:**
- Supply of Alcohol
 - Late Night Refreshment
 - Recorded Music
 - Provision of Facilities for Dancing
- 1.4 Times when the relevant licensable activity is permitted by the premises licence:**
Please see attached Premises Licence - Please see Appendix 1
- 1.5 Designated Premises Supervisor:**
Mohammed Abdul Salique

2. Summary of Review Application –

Full details are set out in the Review Application Form, Review Pack and Supporting Statements from Immigration Officers – Please see Appendix 2

Exhibit 01 – Review Application
Exhibit 02 – Spice of Life Review Pack
Exhibit 03 – Statement IO 1
Exhibit 04 – Statement IO 2
Exhibit 05 – Statement IO 3
Exhibit 06 – Statement IO 4
Exhibit 07 – Statement IO 5
Exhibit 08 – Statement IO 6
Exhibit 09 – Statement AIO 7
Exhibit 10 – Evidence of Civil Penalty
Exhibit 11 – Email Received from Civil Penalty Compliance Team

Full details of a Review Representation received from Humberside Police along with a Supporting Statement received from Licensing Officer – Please see Appendix 3

The following information is also included in the bundle: -

Exhibit AKS/01 – Map of Area/Premises Picture

Exhibit AKS/02 – Premises Licence

Exhibit AKS/03 – Home Office Impact Assessment

2.1 Date review application received:

16 November 2020

2.2 Person making application for review:

Home Office Immigration Enforcement

2.3 Licensing objective affected:

The Prevention of Crime and Disorder

3. Representations –

3.1 One representation was received from Humberside Police in support of the review

3.2 There were no other representations from the other responsible authorities or any interested parties.

4. Statement of Licensing Policy -

The following sections of North East Lincolnshire Council's Statement of Licensing Policy 2015 to 2020 are considered relevant to this review application:

- Licensing Objectives: 2.1 – 2.4, 9.1 – 9.1.9
- Premises Licence: 8.2.1 – 8.2.9
- Representations: 8.7.1 - 8.7.4
- Reviews: 8.8.1 – 8.8.2, 8.8.5 - 8.8.6
- Prevention of Crime and Disorder: 9.2.1 – 9.2.7

5. Guidance issued under Section 182 of the Licensing Act 2003 –

This guidance is provided for Licensing Authorities carrying out their functions. It is regarded by the Government as a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. It does not however replace any statutory provisions of the 2003 Act and it is for the Licensing Authority to take their own professional and legal advice about its implementation.

The following sections of the Guidance are considered to be relevant to this review application:

- Crime and Disorder 2.1 - 2.6
- Late Night Refreshment 3.12 – 3.18
- Home Office Immigration Enforcement Acting as a Responsible Authority 9.25
- Reviews 11.1 – 11.11

6. General Advice on Determination of the Application –

- 6.1** The sub-committee are advised that findings on any issues of fact should be on the balance of probability.
- 6.2** The sub-committee are advised that in arriving at any decision, it must have regard to relevant provisions of national guidance and North East Lincolnshire Council's Statement of Licensing Policy. Reasons must be given for any departure.
- 6.3** The sub-committee are advised that the final decision should be based on the individual merits of the application and the factual findings made at the hearing.
- 6.4** Section 52 of the Act states that the Licensing Authority must, having regard to the application for review and any relevant representations, take such of the steps set out below as it considers **appropriate** for the promotion of the licensing objectives:
- Modify the conditions of the licence (i.e. alter, omit or modify conditions).
 - Exclude the licensable activity from the scope of the licence.
 - Remove the designated premises supervisor.
 - Suspend the licence (or an aspect of it) for a period not exceeding 3 months.
 - Revoke the licence.
- 6.5** The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to 3 months. It may also be decided that no action is necessary and consideration given to whether a warning should be issued to the licence holder and/or recommend improvement within a particular period of time.
- 6.6** Conditions should be proportionate to the size, style and characteristics of the premises and the activities proposed or taking place and must be **appropriate**.
- 6.7** Paragraph 11.20 of the Section 182 guidance recommends that in

deciding which powers to invoke, licensing authorities should so far as possible seek to establish the cause or causes of the identified problem and direct proportionate responses at these areas as a means of remedial action.

- 6.8** Paragraph 11.18 of the Section 182 guidance points out that it may be the case that the licensing authority decides that no further steps are necessary in order to promote the licensing objectives or that an informal warning is considered sufficient. However it also states that where responsible authorities have already issued warnings that have not been heeded, this approach should not be repeated.
- 6.9** The sub-committee are advised that they must take into account the following Human Rights provisions:
- Everyone is entitled to peaceful enjoyment of their possessions (includes licences), although a person can be deprived of their possession if it is in the “public interest”.
 - Everyone affected by a decision has a right to a fair hearing.
 - Everyone has the right to his private and family life, his home and his correspondence.
- 6.10** The sub-committee, in its decision making, must have due regard to its public sector equality duty under section 149 of the Equality Act 2010

7. Observations –

- 7.1** The premises have been visited on five previous occasions by Immigration. During visits in 2012 and 2015, individuals were also encountered working illegally and were arrested.
- 7.2** It has been alleged that the Manager has been verbally aggressive to Immigration Officers on this occasion and during a visit in 2015.
- 7.3** It has been alleged that the Manager was obstructive to Immigration Officers during the operation whilst they were trying to gain information from the illegal workers and other employees of the business.
- 7.4** One of the illegal workers confirmed that the Manager, who was consistently described by workers at the premises as the son of the owner, paid him in cash for his work. The other illegal worker confirmed he was sometimes given money. Both confirmed that they had never been asked to provide evidence that they were allowed to work in the UK by the Manager or anyone else at the premises.

- 7.5 Under Section 182 of the Licensing Act 2003 (revised Guidance April 2018), section 2 refers to the Licensing Objectives, starting with Crime and Disorder, subsection 2.6 specifies “The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises’. The evidence suggests the Crime and Disorder Licensing Objective has been undermined in this respect.

Furthermore Subsection 11.28 states that “where reviews arise, and the licensing authority determines that the crime prevention objective is being undermined.....it is expected that revocation of the licence – even in the first instance – should be seriously considered”

- 7.6 A Civil Penalty of £30,000 was issued in relation to illegal workers being found at the premises. The penalty was higher than the normal £10,000 per worker due to the lack of cooperation received by Immigration Officers. The penalty remains unpaid despite there being no objections or appeals.

**Report prepared by: Jo Bennett - Licensing Enforcement Officer
21 December 2020**