

This report will be made
public on 17 July 2020



Report **DCL/20/07**

To: Licensing Sub-Committee
Date: 27 July 2020
Status: Non-Executive Decision
Head of service: Amandeep Khroud, Assistant Director - Governance & Law

SUBJECT: An application for a Review of a Premises Licence in respect of:
Spicy Touch, 15 Station Road, Lyminge, Kent, CT18 8HS

SUMMARY: This report outlines the application made by Home Office - Immigration Enforcement, for a Review of the Premises Licence at a restaurant in Lyminge following enforcement action taken by them. The Licensing Sub-Committee must determine the outcome for the application.

REASONS FOR DETERMINATION:

The Committee is asked to consider the Review application for the Premises Licence. When considering the application the Committee must ensure they fully promote the licensing objectives. The Committee is obliged to have regard to the revised national section 182 guidance and the council's own licensing policy.

DETERMINATION:

The Licensing Sub-Committee is asked to:

1. To note the contents of Report DCL/20/07.
2. To determine the application. The options for determining the application are set out in section 4.

1. BACKGROUND

- 1.1 The Licensing Act 2003 provides that the sale or supply of alcohol on and off the premises and other licensable activities must be authorised by a premises licence.

A premises licence holder must comply with the four licensing objectives:

- The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 1.2 The premises at 15, Station Road, Lyminge, Kent CT18 8HS has held a licence since 2013. The Premises Licence holder and Designated Premises Supervisor was Mr Vishal Nanda until November 2019, when the Licence was transferred by Mr Man Bahadur Limbu to Spicy Touch (UK) Limited and the DPS was transferred to Mr Man Limbu. A copy of the current licence can be found at Appendix 1.

2. APPLICATION

- 2.1 An application to Review the Premises Licence has been received from the Home Office – Immigration Enforcement. The application can be found at Appendix 2.
- 2.2 The application sets out the enforcement action taken by the Home Office on 21st November 2019 when they found a Bangladesh national working illegally at the premises. A civil penalty of £15,000 was imposed on the owner of the premises, Mr Man Bahadur Limbu, on 17th February 2020. There was no objection or appeal from Mr Limbu. The deadline for payment has passed and no payment had been made by the 21st May 2020. The premises has continued to operate since.
- 2.3 The employment of people who do not have the right to work in the UK is a serious crime and can be linked to the exploitation of vulnerable people.
- 2.4 Employing people without making the legally required checks demonstrates that the premises licence holder is not robust and does not take his responsibilities or the Licensing Objectives seriously.
- 2.5 Working illegally is a criminal offence and on conviction an illegal worker may receive a custodial sentence of up to 6 months and an unlimited fine.
- 2.6 An employer who employs an illegal worker may be liable for a civil penalty of up to £20,000 per illegal worker and an employer who knowingly or has reasonable cause to believe that employment is not permitted, may on conviction after indictment, be subject to a custodial sentence of up to five years, and an unlimited fine.
- 2.7 The Home Office (Immigration Enforcement) have submitted this application to Review the premises licence due to the significant risk that

the licensing objective of preventing crime and disorder is being undermined.

- 2.8 The Immigration Act 2016 brought in amendments to the Licensing Act 2003 relating to illegal working. Under Schedule 4, Section 5 it states that a premises licence may be revoked if considered appropriate for the promotion of the crime prevention objective, in order to prevent illegal working.
- 2.9 The Home Office Guidance issued under section 182 of the Licensing Act 2003 states: 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.

3. RELEVANT REPRESENTATIONS

- 3.1. This Hearing has been required by the Licensing Act 2003 because the Review application was made by a Responsible Authority. No other representations were submitted.

Responsible Authority	Comments
Home Office - Immigration	Review application submitted
Kent Police	None
Environmental Health (Pollution)	None
Environmental Health (Commercial)	None
Kent Fire and Rescue	None
Planning	None
Child Protection Agency	None

The application can be found in Appendix 2.

4. OPTIONS

- 4.1. The Licensing Sub-Committee has the following options:
- a) Take no action against the Premises Licence
 - b) Issue an informal warning
 - c) Add conditions to the Licence
 - d) Exclude a licensable activity
 - e) Remove the DPS
 - f) Suspend the Licence for a period up to 3 months
 - g) Revoke the Licence

- 4.2. The Committee is asked to note that it may not add conditions or revoke the licence merely because it considers it desirable to do so. The Committee must only consider evidence that relates to the 4 Licensing Objectives. Any conditions added must promote the Licensing Objectives.

5. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Briony Williamson, Senior Licensing Officer
Telephone: 01303 853475
Email: briony.williamson@folkestone-hythe.gov.uk

Background documents:

Current Licensing Policy is available under the Policies section of the website:

<https://www.folkestone-hythe.gov.uk/your-council/policies-plans-and-documents/policy-documents>

The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available at:

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

The Immigration Act 2016 can be read here:

http://www.legislation.gov.uk/ukpga/2016/19/pdfs/ukpga_20160019_en.pdf

The Committee members are advised to read the new guidance thoroughly. Your attention is drawn to paragraphs 9.42, 9.43 and 9.44 in respect of the determination of the application. Additionally members are advised to refer to section 10 about imposing conditions. It is also good practice that if they propose to apply conditions they should be discussed with the applicant prior to the determination to ensure that they are proportionate.

6. APPENDICES

Appendix 1. Current Premises Licence

Appendix 2. Review Application Form