

Report to: **Licensing Sub-Committee**

Date: **12th December 2018**

Title: **Application for the review of premises licence at 22 Mill Street, Chagford, TQ12 8AW.**

Portfolio Area: **Customer First**

Wards Affected:

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

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Recommendations:

That the Sub-Committee consider the application for the review of the Premises Licence and make a determination under s.52 Licensing Act 2003, namely to:

- i modify the conditions of the licence;**
- ii exclude a licensable activity from the scope of the licence;**
- iii remove the designated premises supervisor;**
- iv suspend the licence for a period not exceeding three months;**
- v revoke the licence;**

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes steps in (i) or (ii) above, it may provide that the modification or exclusion is to have effect permanently or for only such period (not exceeding three months) as it may specify.

1. Executive summary

- 1.1 The purpose of the Licensing Sub-Committee meeting is to determine an application for the review of the Premises Licence at **22 Mill Street, Chagford, TQ12 8AW, known as 22 Mill Spice**, in accordance with Section 52 of the Licensing Act 2003.
- 1.2 An application to review the Premises Licence for the above was received from Home Office Immigration Enforcement on 25th October 2018. The grounds given for the review application is that the premises licence holder does not meet the licensing objective of 'prevention of crime and disorder' due to illegal working taking place at the premises. In light of this, Home Office Immigration Enforcement have requested that the outcome of the review process is revocation of the premises licence. A copy of the review application is attached at **Appendix A**.
- 1.3 The current premises licence and plan can be found at **Appendix B**. The only licensable activity permitted under the premises licence is the sale of alcohol for consumption on the premises:
Monday to Saturday – 10am to midnight
Sunday – midday to 11.30pm
Christmas Day and Good Friday – midday to 11.30pm
There are conditions on the licence restricting alcohol sales only to those persons taking table meals at the premises, as an ancillary to their meal.

2. Background

- 2.1 Under section 51(1) Licensing Act 2003, a responsible authority or any other person may apply to the relevant licensing authority for the review of the premises licence. The grounds for review must be relevant to at least one or more of the following licensing objectives:
- Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- 2.2 The Licensing Act 2003 was amended by the Immigration Act 2016 by introducing immigration safeguards into the licensing regime. One of these changes was the addition of the Home Office (Immigration Enforcement) as a responsible authority. In this role, they are able to make representations in relation to certain licence applications, as well as apply to review an existing premises licence where there are concerns in relation to any of the licensing objectives.
- 2.3 A review application has been received from Home Office (Immigration Enforcement) in respect of 22 Mill Street, Chagford (WDPLWA0067). The stated grounds for the review are:

“We have grounds to believe the licence holder will fail to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.”

- 2.4 Statutory guidance issued under section 182 of the Licensing Act states:
“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.”
- 2.5 Further information has been provided by Home Office (Immigration Enforcement) relating to their findings, which is included on the review application form (**Appendix A**). Immigration Enforcement officers visited the premises on Friday 8th June and found three persons present at the restaurant with no permission to work. In addition, the premises licence holder, Mr Shabuddin Parvas, has been served with a civil penalty of potentially up to £60,000. We have been informed that this action is still in progress.
- 2.6 The premises licence for 22 Mill Street, Chagford (WDPLWA0067) was transferred to Mr Shabuddin Parvas in December 2016. Mr Parvas also became the designated premises supervisor (DPS) at this time.
- 2.7 The premises is currently trading as an ‘Indian restaurant and takeaway’. A copy of the premises licence and plan is at **Appendix B**. The premises is located in Mill Street, Chagford, near to the town centre and close to many residential properties.
- 2.8 As an application to review the premises licence has been received and not withdrawn, the Licensing Sub-Committee acting on behalf of the Licensing Authority must make a determination on this application. When coming to a decision, the Licensing Sub-Committee must give consideration to West Devon Borough Council’s Statement of Licensing Policy (the Policy) and Home Office guidance issued under Section 182 Licensing Act 2003 (revised April 2018).
- 2.9 The following responsible authorities are statutory consultees under Licensing Act 2003:
- Devon and Cornwall Police
 - Devon and Somerset Fire and Rescue Service
 - Devon Safeguarding Children’s Board
 - Devon County Council Trading Standards

- Devon Drug and Alcohol Action Team, NHS Devon
- West Devon Borough Council Development Management (Planning)
- Dartmoor National Park Authority Planning Department
- West Devon Borough Council Environment Health (Health and Safety)
- West Devon Borough Council Environmental Health (Pollution Control)
- Home Office Immigration Enforcement (Applicant for Review)

2.10 There were no representations received from any of the other responsible authorities.

2.11 Section 3.1 of the Council's Policy states: The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives. (These objectives are the only matters to be taken into account in determining the application and any conditions attached must be appropriate to achieve the licensing objectives). These objectives are listed at 2.1 of this report.

2.12 Section 4.1 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.

3. Outcomes/outputs

3.1 When determining an application for a review of a premises licence, the following sections of the Statement of Licensing Policy (the policy) and Section 182 Guidance (the guidance) are especially relevant:

3.2 The policy states at paragraphs 9.2.4-9.2.6:

9.2.4 When considering a review of a premises licence or club premises certificate, the Authority will expect applicants for the review to provide evidence of previous infringements of licensing regulations, failure to comply with the licence conditions and/or failure to promote the licensing objectives.

9.2.5 Following a review, the Authority will focus any remedial action directly on the concerns identified in the representations. In all cases, action will be appropriate, reasonable and proportionate to the nature of the problems giving rise to the review. Options available are:

- to modify the conditions of the premises licence
- to exclude a licensable activity from the scope of the licence);
- to remove the designated premises supervisor
- suspend the licence for a period not exceeding three months;
- revoke the licence.
- to take no action

9.2.6 In cases where the crime and disorder objective has been undermined or where it can be demonstrated that a premises has a history of persistent offending, suspension or revocation of a licence, even in the first instance, may be seriously considered as a form of deterrence.

3.3 Section 11.17 of the guidance states:

"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."

3.4 Section 11.20 of the guidance states:

"In deciding which of these powers (see 3.2 above) 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."

3.5 At section 11.27, the guidance lists certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. Included in this list is the use of licensed premises for 'employing a person who is disqualified from that work by reason of their immigration status in the UK.'

3.6 Section 11.28 of the guidance 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."

3.7 The desired outcome is a determination of the application to review the premises licence, with reasons provided which relate to the four licensing objectives and when conditions are imposed, that these are appropriate to address the licensing objectives.

4. Options available and consideration of risk

4.1 The Licensing Authority may decide to impose additional conditions on the premises licence to address the four licensing objectives; to

remove the designated premises supervisor; to suspend the licence; or to revoke the premises licence. When coming to their decision the Licensing Sub-Committee must give consideration to the Section 182 Guidance and the Statement of Licensing Policy. Reasons must be given which relate to the licensing objectives for any decision made.

- 4.2 A decision made by the Licensing Sub-Committee may be appealed by the premises licence holder, the applicant, or any person who has made relevant representations. The right of appeal is to the Magistrates' Court by virtue of Section 181 and Schedule 5 of the Licensing Act 2003. The Magistrates' Court may:
- a) Dismiss the appeal,
 - (b) Substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
 - (c) Remit the case to the licensing authority to dispose of it in accordance with the direction of the court,
- and may make such order as to costs as it thinks fit.

5. Proposed Way Forward

- 5.1 That the Sub-Committee consider the application for the review of the Premises Licence and make a determination in respect of this application, namely to:

- i) modify the conditions of the licence;
- ii) exclude a licensable activity from the scope of the licence;
- iii) remove the designated premises supervisor;
- iv) suspend the licence for a period not exceeding three months;
- v) revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes steps in (i) or (ii) above, it may provide that the modification or exclusion is to have effect permanently or for only such period (not exceeding three months) as it may specify.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Licensing Act 2003 gives Licensing Authorities the responsibility for determining applications submitted under this provision. This is a statutory obligation.</p> <p>As a review application has been received that has not been withdrawn, this hearing must be held.</p> <p>The Licensing Sub-Committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The Licensing Sub-Committee must disregard any information or evidence not relevant to the licensing objectives. The Licensing Authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.</p> <p>The Act requires (Section 52) that when determining an application to review a premises licence, the Sub-Committee takes any of the following steps which are appropriate for the promotion of the licensing objectives:</p> <ul style="list-style-type: none"> i) modify the conditions of the licence; ii) exclude a licensable activity from the scope of the licence; iii) remove the designated premises supervisor; iv) suspend the licence for a period not exceeding three months; v) revoke the licence; <p>The Sub-Committee must give its reasons for the decision to take any of these steps. Similarly, the Sub-Committee must give its reasons if it is decided that no action is to be taken.</p> <p>The premises licence holder, the applicant or any person who has made relevant representations has the right to appeal a decision made by the Licensing Sub-Committee to the Magistrates' Court by virtue of Section 181 and Schedule 5 of Licensing Act 2003.</p>

		<p>On appeal, the Magistrates' Court may:</p> <ul style="list-style-type: none"> a) dismiss the appeal; b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority; c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court. <p>and may make such order as to costs as it thinks fit.</p>
Financial	N	There are no direct financial implications to the Council from this Report. However, should a decision be challenged this could result in the Council facing an appeal to the Magistrates Court with the risk of costs being awarded against the Council.
Risk	Y	<p>The Licensing Authority must follow strict legislation in accordance with the Licensing Act 2003 and adhere to the statutory instruments contained with the Act.</p> <p>All decisions must be taken in consideration of the four licensing objectives (section 2.1). These objectives are in place to give protection to the public from the potential negative impacts caused by licensed premises.</p> <p>Decisions may be appealed (see financial and legal/governance sections above).</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	Compliance with the Human Rights Act 1998 – Article 6: right to a fair trial.
Safeguarding	Y	All decisions must take into consideration the 'protection of children from harm' licensing objective.
Community Safety, Crime and Disorder	Y	Section 17 Crime and Disorder Act 1998 applies. Decisions made must relate to the four licensing objectives as detailed in section 2.8 of this report.
Health, Safety and Wellbeing	Y	All decisions must take into consideration the four licensing objectives, including 'public safety' and 'protection of children from harm'.
Other implications	N/A	

Supporting Information

Appendices:

Appendix A – premises licence review application

Appendix B – copy of premises licence and plan

Background Papers:

[under provisions of the Local Government Act 1972]

The Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003

West Devon Borough Council's Statement of Licensing Policy

Process checklist	Completed
Portfolio Holder briefed	Yes/No
SLT Rep briefed	Yes/No
Relevant Exec Director sign off (draft)	Yes/No
Data protection issues considered	Yes/No
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	Yes/No