

Report to: **Licensing Sub-Committee**

Date: **9th April 2024**

Title: **Application for the review of premises licence for Rajpoot Restaurant, Bridge House, 25 Fore Street, Okehampton, EX20 1DL**

Portfolio Area: **Place and Enterprise**

Wards Affected: **Okehampton South**

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 for **Rajpoot Restaurant, Bridge House, 25 Fore Street, Okehampton, EX20 1DL**, 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 20th February 2024. 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. A copy of the review application form is attached at **Appendix A** and the Home Office 'Licence Review Pack' relating to this premises is at **Appendix B**.
- 1.3 The current premises licence (WDPLWA0192) and premises licence plan can be found at **Appendix C**. The premises is licensed for the following activities:
- Plays (Indoors), Live Music (Indoors), Dance (Indoors)
Monday to Sunday: 12:00 to 23:00
New Year's Eve: 12:00 to 03:00
- Recorded Music (Indoors)
Sunday to Thursday: 12:00 to 23:00
Friday and Saturday: 12:00 to 01:00
New Year's Eve: 12:00 to 03:00
- Late Night Refreshment (Indoors and Outdoors)
Monday to Sunday: 23:00 to 00:00
New Year's Eve: 23:00 to 03:00
- Supply of Alcohol (consumption on and off premises)
Monday to Thursday: 10:00 to 00:00
Friday and Saturday: 10:00 to 01:00
Sunday: 10:00 to 23:00
New Year's Eve: 10:00 to 03:00
The supply of alcohol for consumption off the premises may only be provided from 10:00 to 00:00 Monday to Sunday and as ancillary to a take-away meal only (aside from general extension of timings on New Year's Eve/New Year's Day).
- 1.4 The opening hours of the premises are:
Monday to Thursday: 09:00 to 01:00
Friday and Saturday: 09:00 to 02:00
Sunday: 09:00 to 00:00
New Year's Eve: 09:00 to 03:00

- 1.5 Alcohol sold for both consumption on and off the premises are restricted to being provided for consumption as ancillary to either a table meal or a take-away meal.

2. Background

- 2.1 A review application has been received from Home Office (Immigration Enforcement) in respect of the premises licence for Rajpoot Restaurant, Bridge House, 25 Fore Street, Okehampton, EX20 1DL (WDPLWA0192). The stated grounds for the review are:
“We have grounds to believe the licence holder has failed to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.”
- 2.2 The premises is currently trading as an ‘Indian restaurant and takeaway’. A copy of the premises licence and plan is at **Appendix C**. The premises is located in the town centre of Okehampton.
- 2.3 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 a 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
- 2.4 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.
- 2.5 Statutory guidance issued until section 182 of the Licensing Act states at paragraph 2.6:
“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 evidence of a right to work check, either physical or digital (e.g. copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises.”

- 2.6 Detailed information has been provided by Home Office Immigration Enforcement relating to their findings, which can be found at (**Appendix B**). Immigration Enforcement officers have visited the premises on five occasions since 2016, with the most recent visit being Thursday 8th June 2023, when two West Devon Borough Council Licensing Officers were also in attendance. On this occasion 4 persons were found present at the restaurant with no permission to work. The designated premises supervisor (DPS), Mr Ziaur Rahman, was served a civil penalty of £80,000 and an illegal working closure notice was served on the business immediately. The following day an illegal working compliance order was granted by Plymouth Magistrates Court for a period of 12 months.
- 2.7 The results of previous visits to the premises by Immigration Enforcement are as follows:
- 20 January 2022 – 4 illegal workers encountered
 - 8 July 2017 – no illegal workers encountered
 - 20 August 2016 – 2 illegal workers encountered
 - 17 June 2016 – 4 illegal workers encountered
- 2.8 From June 2016 to June 2023 there have been 11 arrests and a total of 14 illegal workers encountered.
- 2.9 Four further compliance visits were carried out in 2023 following the closure notice approved by the Magistrates Court and showed that the licence holder has not been fully compliant with the court order requiring him to have up-to-date records that are ready for inspection. It has been stated that none of the civil penalties that have been served on Mr Rahman have been paid.
- 2.10 Immigration Enforcement have requested that the premises licence is revoked. Due to the history of non-compliance at this premises, it is their view that the imposition of additional conditions or a suspension of the licence would be insufficient to act as a deterrent to the licence holder and other premises licence holders from engaging in the employment of illegal workers.
- 2.11 The premises licence for Rajpoot Restaurant (WDPLWA0192) was transferred to Mr Gias Uddin in October 2010, he also held the role of designated premises supervisor (DPS) at this time. Mr Ziaur Rahman became the DPS in January 2012, Mr Uddin remains the premises licence holder.
- 2.12 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 (update January 2024).

2.13 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)

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

2.15 Sections 3.1 and 3.2 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. Each objective is of equal importance. The licensing objectives are listed at 2.1 of this report.

2.16 Section 2.4 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 6.2.4-6.2.6:

6.2.4 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.

6.2.5 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

6.2.6 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 Sections 11.17 and 11.18 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.

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."*

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</p>

		<p>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 – Home Office 'Licence Review Pack' EXEMPT

Appendix C – 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