

LICENSING ACT SUB COMMITTEE

LICENSING ACT 2003 PREMISE LICENCE REVIEW – FAR PAVILION RESTAURANT, 25 BYE PASS ROAD, BOLTON-LE-SANDS

DETERMINATION OF APPLICATION FOR THE REVIEW OF THE PREMISE LICENCE

16th JULY 2019

Report of Licensing Enforcement Officer

PURPOSE OF REPORT

To enable members to determine an application for a review of a Premise Licence under Section 51 of the Licensing Act 2003 submitted by Home Office Immigration Enforcement

The report is public

RECOMMENDATIONS

The Sub-Committee is requested to consider the application from Home Office Immigration Enforcement for the review of the premise licence, and any submissions made by the premises licence holder.

In accordance with Section 52 (3) and (4) of the Licensing Act 2003, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (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 matter for decision, therefore, is which, if any, of these steps should be taken.

1.0 Introduction

- 1.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 1.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives .
- 1.3 Home Office Immigration Enforcement has submitted an application for review of a premises licence under Section 51 of the Licensing Act 2003. The application relates to Far Pavilion Restaurant, 25 Bye Pass Road, Bolton-le-Sands. A copy of the application is at Appendix No1. The grounds for submitting the review are based on one of the four licensing objectives, namely;
- The prevention of crime and disorder
- 1.4 A copy of the premises licence for Far Pavilion Restaurant is attached at Appendix No.2. This licence was granted to the premises on 24th November 2005 and details the following licensable activity:-
- Sale & Supply of Alcohol : (Monday – Saturday) 10:00 hours to Midnight
(Sunday) 12:00 hours to 23:30 hours
Good Friday & Christmas Day 12:00 hours to 23:30 hours
New Years' Eve (except a Sunday) 10:00 hours to Midnight
New Years' Eve (on a Sunday) 12:00 hours to 23:30 hours
- 1.5 In accordance with the relevant Regulations, the parties have been given Notice of the Hearing. A copy of the Notice of Hearing is attached for Members attention at Appendix No.3.

2.0 Legal background to Review Application

- 2.1 Under Section 51 (1) of the Licensing Act 2003, a responsible authority or other person may apply to the licensing authority for the review of a licence.

The grounds for review must relate to one or more of the licensing objectives and as Members will be aware, these are:

- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance and
 - the protection of children from harm
- 2.2 An application for review must be copied to the premises licence holder and to the responsible authorities. Once such an application is received, the licensing authority must place a notice at the premises, and there is then a period of 28 days during which representations may be made to the licensing authority.

- 2.3 A copy of the notice which was displayed at the premises during the 28 day period is attached at Appendix No.4. Licensing Enforcement Officers made occasional checks throughout the 28 day period to satisfy that the notice was still in place.
- 2.4 Members are reminded that representations can either be in support of or against an application for review of a premises licence. The representation must relate to the likely impact of the grant of the licence in relation to one or more of the four licensing objectives, namely:
- Public Safety
 - The prevention of crime and disorder
 - The protection of children from harm
 - Prevention of public nuisance

During the statutory 28 day consultation period no representations were received either in support of the applicant or licence holder.

3.0 **Background information provided by Licensing Authority**

The application for review of the premises licence submitted by Home Office Immigration Enforcement is on the grounds that the licensing objective relating to the prevention of crime and disorder is not being observed at Far Pavilion Restaurant, 25 Bye Pass Road, Bolton-le-Sands, as illegal working has been identified at this premises on two separate occasions.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6th April 2017. The intention is to prevent illegal working in premises licensed for the sale by retail of alcohol or late night refreshment.

A visit to the premises was undertaken by Immigration Enforcement Officers on 18th July 2014 where three illegal workers were found and this was dealt with by way of a Notice of Potential Liability.

Following intelligence received that illegal workers were once again being employed at the premises a further visit was undertaken by Immigration Enforcement on 1st February 2019 where two arrests were made and another Notice of Potential Liability was served upon the proprietor.

Whilst this visit was conducted under Section 179 of the Licensing Act 2003 in attendance with a Licensing Enforcement Officer from Lancaster City Council, no breaches of the premise licence conditions were found. However, investigations found that three bedrooms and a bathroom off the kitchen area were being utilised by the illegal employees and concerns were subsequently raised with Lancashire Fire & Rescue Authority and the Council's Housing department.

Following a visit to the premises by the Fire Authority an Enforcement Notice was issued as they were satisfied it was grossly deficient with regard to fire safety with no detection equipment, emergency lighting or indeed a safe route to exit the building in the event of a fire. In order to avoid being served with a Prohibition Order, the owner of the restaurant assured the Fire Authority that no employees would stay overnight at the premises.

Home Office Immigration Enforcement are satisfied that the proprietor and licence holder of Far Pavilion Restaurant has displayed scant regard for both immigration and fire safety laws whilst being found to be employing illegal workers on two separate occasions in wholly unsafe conditions. Additional information regarding the Far Pavilion Licence Review is contained at Appendix 5.

3.1 **Government Guidance under Section 182 of the Licensing Act 2003 in relation to a review hearing following a representation involving Crime and Disorder**

Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

It is envisaged that licensing authorities, the police 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.

3.2 Government Guidance under Section 182 of the Licensing Act 2003 in relation to the Prevention of Crime and Disorder is attached at Appendix No.6 to this report.

3.3 The relevant parts of the Councils Statement of Licensing Policy are set out at Appendix No.7

3.4 **Natural Justice and Human Rights**

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

4.0 **Conclusion**

The management of Far Pavilion Restaurant have displayed scant regard to the crime & disorder licensing objective having been found to be employing illegal workers on two separate occasions in conditions considered grossly deficient in terms of fire safety by Lancashire Fire & Rescue Authority.

Members should consider the application for review of the premises licence and any steps it considers necessary for the promotion of the licensing objectives.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
None.	
FINANCIAL IMPLICATIONS	
Financial Services have not been consulted as there are no financial implications.	
LEGAL IMPLICATIONS	
Legal implications are contained within the report, In accordance with Section 181 and Schedule 5 of the Licensing Act 2003, the parties have a right of appeal to the magistrates court within 21 days	
BACKGROUND PAPERS	Contact Officer: David Eglin Telephone: 01524 582387 E-mail: deglin@lancaster.gov.uk Ref: DWE
None	