

# **LICENSING ACT SUB COMMITTEE**

## **LICENSING ACT 2003 PREMISE LICENCE REVIEW – FLAMES,**

**1-3 ROSEMARY LANE, LANCASTER, LA1 1NR**

### **DETERMINATION OF APPLICATION FOR THE REVIEW OF THE PREMISES LICENCE**

**10<sup>th</sup> September 2024**

#### **Report of Licensing Enforcement Officer**

##### **PURPOSE OF REPORT**

To enable members to determine an application for a review of a Premises Licence under Section 51 of the Licensing Act 2003 submitted by Home Office Immigration Enforcement. The application relates to Flames, 1-3 Rosemary Lane, Lancaster, LA1 1NR.

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, representations made by other responsible authorities, other persons 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
- (f) leave the premises licence intact.

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 Flames, 1-3 Rosemary Lane, Lancaster, LA1 1NR. 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 Flames is attached at **Appendix No.2**. This licence was granted to the premises on 24<sup>th</sup> November 2005 and details the following licensable activities: -
- Late Night Refreshment (Indoors)

Monday – Sunday	23:00 hours to 05:00 hours
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- 1.5 The premises licence was transferred under Section 42 of the Licensing Act 2003 to the incumbent licence holder, Mr Rudolf Collaku, on 12<sup>th</sup> June 2019.
- 1.6 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**.
- 1.7 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.

## 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 Officers have made checks throughout this period which commenced on 16<sup>th</sup> July 2024 and concluded on 12<sup>th</sup> August 2024 to ensure 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.
- 2.5 During the statutory 28-day consultation period a further representation was received from the Chief Officer of Lancashire Constabulary represented by PC2338 Andrew Taylor in support of the applicant. No representations were received in support of the licence holder.

### 3.0 **Details of application to review from Home Office (Immigration Enforcement)**

- 3.1 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 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.
- 3.2 Home Office Immigration Enforcement service are satisfied that activities undertaken at Flames takeaway over recent years involving illegal workers and practices are clearly prejudicial to the prevention of immigration crime including illegal working.

The premises has been visited on five occasions between October 2022 and May 2024 by Home Office Immigration Enforcement Officers where illegal working has been a constant theme, with six illegal workers have been encountered. On the most recent visit, Enforcement Officers served a closure notice.

- 3.3 On each occasion it was established by Immigration Enforcement Officers that the incumbent premises licence holder, Mr Rudolf Collaku, was the liable party. Accordingly, civil penalties totalling £110,000 have been issued to the business on 3 separate occasions, all of which currently remain unpaid.
- Civil penalty of £15,000 issued on 24 March 2023 for employing a person with no right to work in the UK. This was objected and the decision was maintained on 18 April 2023. No payment has been made yet.
  - Civil penalty of £40,000 issued on 17 January 2024 with a payment due date of 16<sup>th</sup> February 2024 for employing two people, one in breach of their work conditions and the other with no right to work in the UK. No payment has been made yet.
  - Civil penalty of £55,000 issued on 21 June 2024 for employing a person with no right to work in the UK. No payment has been received yet, but the penalty is not due for payment until 23 July 2024. The liable party has until 22 July 2024 to object to the penalty.

- 3.4 On each occasion during enforcement visits undertaken by Immigration Officers, Mr Rudolf Collaku was the person identified by staff members as the owner and manager of Flames or admitted to as such by himself.
- 3.5 Details of visits undertaken by Immigration Enforcement Officers along with Lancashire Constabulary and other partner agencies between 26<sup>th</sup> October 2022 and 22<sup>nd</sup> May 2024 inclusive are detailed at **Appendix No.5**.
- 3.6 Home Office Immigration Enforcement consider a review of the premises licence for Flames, 1-3 Rosemary Lane, Lancaster is proportionate given the following:
- 3.7 It is considered the licence holder, Mr Rudolf Collaku, has deliberately overlooked the rules and laws in place to prevent crime and disorder.
- 3.8 Additionally, the licence holder has received three civil penalties totalling £110,000. The first civil penalty was issued on 24 March 2023 after the premises was visited three times. This financial sanction failed to modify the license holder's behaviour as further illegal workers were encountered and two additional civil penalties were issued. It must be noted that the license holder has failed to pay any of these civil penalties.
- 3.9 Home Office Immigration believe that the license holder has shown complete disregard for UK immigration laws by employing illegal workers. Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person can work. It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.
- 3.10 Home Office Immigration Enforcement contend that under the control of Mr Rudolf Collaku, Flames has been found to be employing illegal workers on numerous occasions with the premises clearly failing to meet the crime and prevention licensing objective. They believe therefore, that full revocation of the premises licence is both justified and proportionate.
- 3.11 Furthermore, Home Office Immigration Enforcement believe the use of illegal labour in this country provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. The main draw for illegal immigration is the ability to work outside of the law, these illegal workers can find themselves toiling in poor working conditions for long hours and little remuneration.
- 3.12 They request a firm response to this behaviour is required to ensure that the licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers and deny work to the local community, evade the payment of income tax and(unlawfully) inflate their profits to the expense of others.

#### **4.0 Representations**

- 4.1 The application for review of the premise licence issued under Section 51 of the Licensing Act 2003 in respect of Flames, 1-3 Rosemary Lane Lancaster, is supported by PC Andrew Taylor of Lancashire Constabulary on behalf of Chief Officer of Police.
- 4.2 Police have provided supporting evidence of illegal workers at Flames takeaway and breaches of the conditions within their premises licence relating specifically to a lack of SIA door staff being on duty. Regular reports of delivery vehicles parked on the pavement outside Flames have been received affecting public safety on the corner of the one-way system which joins Rosemary Lane. This is detailed at **Appendix No.6**.
- 4.3 There were reports to Police of people who have been employed at the premises to work and treated poorly and classed as Modern Slavery. Although there were no successful prosecutions in these cases, on the balance of probabilities, Police believe these reported incidents have occurred.
- 4.4 PC Taylor further contends receiving reports of people having their documents seized which he believes will be to control the person and then being slapped when they asked for their documents back. These people are extremely scared and not willing to make a further complaint in fear of further repercussions.
- 4.5 Upon investigating one of the reports of Modern Slavery on 3<sup>rd</sup> April 2019, Police carried out a warrant of entry at Flames Takeaway. During the search of the premises at least £40,000 was seized from the safe. PC Taylor described the money as being rotten in the water in the safe which in his opinion was a clear sign of money laundering through Criminal Activity. Most businesses would bank their cash regularly for safety in case of a Burglary but also to show good bookkeeping for tax purposes. This was not the case at Flames takeaway.
- 4.6 It is the opinion of Police that all these problems highlighted build a picture of a venue and licence holder who runs a business with little or no regard to promoting the four licensing objections. Mr Collaku has shown time and again that no matter what warnings, penalties or enforcement is done at the premises, he choses to ignore these actions and continues to commit offences.
- 4.7 It is therefore the opinion of PC Taylor that full revocation of the premises licence for Flames is appropriate and justified.

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

- 5.1 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 5.2 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing

authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

5.3 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 and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

5.4 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.

5.5 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.

## 6.0 **Statement of Licensing Policy 2023-2027**

6.1 The relevant parts of the Council's current Statement of Licensing Policy in respect of the review of a premises licence or club premises certificate are detailed in Section 4.9 (page 18) and attached for Members attention at **Appendix No.7** to this report.

Within the Statement of Licensing Policy at section 4.94 are various triggers that may give cause for review of a premises licence:

- continual complaints of noise from or in the vicinity of the premises.

- continual complaints of noise or intimidation from customers outside the premises.
- an accumulation of breaches of licensing conditions.
- poor management where the licensing objectives are undermined.
- underage sales of alcohol (persistent or otherwise); crime-related activity; anti-social behaviour.
- sales of alcohol outside of the permitted hours, etc.

Clearly, the application for review of Flames takeaway by Home Office Immigration Enforcement satisfies one or more of these triggers.

6.2 The Licensing Authority shall expect applicants for a review to gather sufficient and relevant evidence relating to the specific premises that is subject to the review. This may include a diary of events and any potential witnesses. Both Home Office Immigration and PC Andrew Taylor, Lancashire Constabulary have provided evidence to support the review of premises licence.

## 7.0 Options for Members to consider

1. Revoke the premises licence in full.
2. Suspend the premises licence for a period of up to 3 months.
3. Modify or include additional conditions.
4. Leave the premises licence intact.

Members should provide full and detailed reasons for their decisions.

## 8.0 Conclusion

8.1 Members are requested to consider the application from Home Office Immigration Enforcement for the review of the premise licence of Flames, 1-3 Rosemary Lane, Lancaster. A takeaway licensed for the provision of late-night refreshment.

Members of the Sub-Committee are asked to consider representations made by responsible authorities, other persons, information provided by the premises licence holder, their representative and any information provided during the hearing.

8.2 Representations from the applicant seeking the review suggests the premises licence holder has no regard for the prevention of crime and disorder licensing objective. The premises has been visited by Home Office Immigration Enforcement on five occasions between October 2022 and May 2024 where illegal working has been identified during each of those visits. Totalling six illegal workers, resulting in £110,000 of unpaid fines.

8.3 The review of premises licence is supported by PC Andrew Taylor of Lancashire Constabulary. The Police have provided evidence in support of the review, including evidence of illegal workers and breaches of the conditions of their premises licence. Additionally, regular reports of delivery vehicles parked on the pavement outside Flames have been received affecting public safety on the corner of the one-way system.

8.4 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 magistrate's court within 21 days.

**BACKGROUND PAPERS**

None

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