

REPORT TO	ON
Licensing Sub Committee Panel	27 November 2018



TITLE	REPORT OF
Review of Premises Licence:- Sangam Balti House	Legal Services Manager/Interim Monitoring Officer

Is this report confidential?	No
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1. PURPOSE OF THE REPORT

To provide an overview of the application and inform Members of the relevant parts of statute and guidance relating to the review application.

2 CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Excellence and Financial Sustainability	
Health and Wellbeing	x
Place	x

Projects relating to People in the Corporate Plan:

People	
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3. RECOMMENDATIONS

Members are requested to:

3.1 note the content of the report; and conduct the hearing in accordance with the hearing procedure and,

3.2 determine what steps are appropriate to promote the Licensing objectives.

4. BACKGROUND TO THE REPORT

4.1 At approximately 20:35 hrs on the 24th August 2018 a joint visit to the premises took place, by representatives from the Home Office, authorised to carry out Immigration Enforcement, Lancashire Fire and Rescue and Officers from the Licensing Authority.

4.2 All staff members were checked and no issues were disclosed with regards to Rights to work in the UK. There were numerous regulatory concerns that came to light on this inspection, items included.

1. Fire Safety issues
2. Housing Offences
3. Health Act 2006 Offences

4.3 Fire Safety Issues

Numerous areas of concerns were found by officers on the evening of the 24/08/2018:

1. Fire Alarm inoperable/no evidence of testing
2. Emergency lighting, no evidence of testing
3. Defective fire doors compromising the means of escape
4. Unmaintained firefighting equipment.
5. Obstructions and hazards on the escape route.
6. Fire detection systems defective

The bedroom that had been prohibited by the Housing Department appeared to still be in use.

This resulted in a further enforcement notice being issued on the 29/08/2018 for the following fire safety issues by Lancashire Fire and Rescue.

1. The fire risk assessment had still not been completed.
2. The fire alarm had not been maintained and tested on a weekly basis in accordance with BS5839-1.
3. The emergency lighting had not been maintained and tested on a monthly basis in accordance with BS5266.
4. The fire door to the kitchen was again nailed in the open position.

Historically, the Fire Service have experienced problems in respect of these premises.

On 13/10/2015 following a complaint from a member of the public Lancashire Fire and Rescue Service found several fire safety issues which resulted in an enforcement notice being issued:

1. No fire risk assessment completed
2. Fire alarm inadequately maintained
3. Emergency lighting inadequately maintained
4. Inadequate Fire alarm system (fire alarm had no power)
5. Inadequate fire separation (kitchen fire door nailed open)
6. Firefighting equipment inadequately maintained

A follow up inspection was performed by the Fire Safety Inspector on the 17/11/2015 and the enforcement notice was withdrawn as the majority of the work had been completed and an agreed action plan was issued with instructions given to complete a fire risk assessment.

The Fire Safety Inspector attended the premises on the 17/01/2017 at the request of South Ribble Borough Council housing department. The housing department prohibited the use of the bedroom for residential accommodation under the Housing Act 2004.

4.4 Housing Offences

On the 23rd January 2017 a prohibition notice was issued by South Ribble Borough Council, preventing a room on the first floor of the premises from being used as living accommodation, numerous hazards were identified as being the reason for the action.

On the evening of the 24th August it was evident that 3 staff members were living in the room which appeared to be in a very poor state. Many personal items such as personal correspondence, washing a shaving kit and many items of clothing were visible. Whilst this matter is not necessarily relevant to the licensing objectives it demonstrates a general disregard for legal compliance issues and legal orders. In addition any person sleeping in this room would be at significant risk if there was an outbreak of fire due to defective fire doors, no fire alarm and hazards on the escape route.

4.5 Health Act 2006 Offences

Section 8 of the Health Act 2006 creates an offence for any person in control of a smoke free premises who fails to prevent a person smoking. On the evening of the 24th August there was evidence of smoking occurring in the fire exit/landing area of the first floor.

4.6 Licensing Conditions

At 21.55 on the 4th September 2018 the premises was visited by Licensing Officers in order to check the terms of the premises Licence, There are 4 conditions within annex 2 on the Premises Licence, they are;

1. A challenge 21 policy will be in place.
2. Regular inspections of the premises will take place.
3. Ongoing staff training
4. There shall be a digital CCTV system on the premises to cover the entrance door and restaurant. This will record 31 days digitally. The recordings should be made available to the police upon reasonable request.

Upon requesting evidence in respect of the above licensing conditions, the Premises Licence Holder/DPS – Mr Bhuiyan was unable to show compliance. Whilst condition 2 on the Licence is not precise or specific with regards to the inspections, given the conditions that prevailed on the evening of the 24th August 2018 it would appear also that this condition has been ignored.

The premises Licence holder and DPS are one and the same person, the Section 182 Guidance indicates that a DPS should be a single point of contact responsible for day to day compliance issues, it would appear that the DPS is the root cause of the problems at this premises and any remedial action should aim to focus on the root cause.

5 REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

5.1 The Lancashire Fire Service have submitted a written representation attached as Appendix B.

6. DECISION TO BE MADE BY THE LICENSING ACT PANEL

6.1 Determination of an application under Section 52 of the Licensing Act 2003

Under Section 52 Licensing Act 2003 the Authority must have regard to the application and any relevant representations and take such steps ... (as are outlined below)... if any, as it considers necessary for the promotion of the licensing objectives.

The steps are:-

- a. to modify the conditions on 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 3 months
- e. to revoke the licence.

Obviously the Committee can also choose to do nothing for example if the application is frivolous, vexatious or repetitive and the Committee must ensure that any action they take is proportionate to the four licensing objectives.

6.2 Numerous paragraphs of the Section 182 Guidance are worthy of mention;

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8 A number of matters should be considered in relation to public safety. These may include:

- *Fire safety;*
- *Ensuring appropriate access for emergency services such as ambulances;*
- *Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);*
- *Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- *Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- *Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- *Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and*
- *Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).*

2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

11.20 In deciding which of these powers 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.

The Council must carry out its licensing functions with the intention of promoting the licensing objectives.

The licensing objectives are:-

- a) The prevention of crime and disorder;
- b) Public safety;
- c) The prevention of public nuisance; and
- d) The protection of children from harm.

The Panel are asked to consider the seriousness of the issues disclosed and deal with this application and take regard of;

1. Its own policy; and
2. Secretary of State Guidance (section 182 of the Licensing Act 2003).

8. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report

9. LEGAL IMPLICATIONS

The Licensing Authority are under a statutory duty to facilitate the Review Hearing. When determining this hearing the Council must comply with the rules of natural justice.

Any party to the proceedings have the right to appeal the decision to the Magistrates Court.

10. COMMENTS OF THE STATUTORY FINANCE OFFICER

11. COMMENTS OF THE MONITORING OFFICER

Please see the comments made at Para 9 above.

12. OTHER IMPLICATIONS:

▶ HR & Organisational Development	None
▶ ICT / Technology	None
▶ Property & Asset Management	None
▶ Risk	None
▶ Equality & Diversity	

13. APPENDICES

Appendix A - Review Application and associated documents.

Appendix B - Lancashire Fire Service Representation

Appendix C – Current Premises Licence

Report Author:	Telephone:	Date:
Chris Ward	01772 625330	05/11/2018