

REPORT TO	ON
Licensing Sub Committee Panel	29 May 2019



TITLE	REPORT OF
Review of Premises Licence:- Turkish Delight	Interim Monitoring Officer & Legal Services Manager

Is this report confidential?	No
------------------------------	----

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	
--------	--

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 On the 18 January 2019 a suspension letter was served at the premises for non-payment of the Annual Renewal Fee (ARF). The sale of hot food or drink after 11pm requires a valid premises licence. Once a suspension is served the licence become void or invalid rendering any Licensable Activity an offence under the Licensing Act 2003.

4.2 On the 19 January 2019 hot food was sold after 11pm so Officers entered the premises to establish who was carrying on the activity, in lay terms who was running or working in the premises under who's direction.

4.3 Section 136 of the Licensing Act 2003 states;

(1) A person commits an offence if—

(a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be so carried on.

(2) Where the licensable activity in question is the provision of regulated entertainment, a person does not commit an offence under this section if his only involvement in the provision of the entertainment is that he—

(a) performs in a play,

(b) participates as a sportsman in an indoor sporting event,

(c) boxes or wrestles in a boxing or wrestling entertainment,

(d) performs live music,

(e) plays recorded music,

(f) performs dance, or

(g) does something coming within paragraph 2(1)(h) of Schedule 1 (entertainment similar to music, dance, etc.).

(3) Subsection (2) is to be construed in accordance with Part 3 of Schedule 1.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to [F1a fine], or to both.

(5) In this Part "authorisation" means—

(a) a premises licence,

(b) a club premises certificate, or

(c) a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied.

4.4 Three members of staff were on the premises, communication was extremely difficult due to poor English language skills on the part of the staff. One of the staff members was a British born Asian male who began to cause a conflict between staff and Officers. After being on the premises for approximately 30 minutes the owner of the business arrived.

4.5 The male who presented himself as the owner was Abdulla Hidrari who claimed he had owned the premises for almost 1 year and was unaware of the suspension. According to the Council records, we had a Zayer NASERI as the licence holder. He was asked to provide the details of the staff.

4.6 Further enquiries revealed that one of the staff working on the Saturday night was not visible on any systems, this was of particular concern as it was disclosed he was a Syrian Asylum seeker. The premises was re visited on the 22 January 2019, the purpose of the visit was to request CCTV footage from the weekend of the 18/19 January 2019 in order to assist enquires with tracing the staff member and establishing the parameters of licensable activity over that weekend. The licence by this point had been transferred to Abdulla Hidrari.

4.7 On the 31 January 2019 Officers returned to collect the footage, no footage had been downloaded and the licence holder was unaware of how to use the system. When officers examined the system it was apparent that the storage capacity was only for 9 days, therefore the images from the 18/19 January 2019 had been overwritten.

4.8 On the 26 February 2019 the Authority received confirmation from the Home Office that the staff member we had been seeking to identify had been confirmed as Mahmoud Abdul GHANI and was in the country illegally and did not have rights to work in the UK.

4.9 On the 10 March 2019 Officers visited the premises to check if the CCTV storage capacity had been increased to comply with the 31 day requirement embedded on the Premises Licence. They confirmed that no upgrades to the CCTV system had been done.

5 REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

5.1 No formal representation from Responsible Authorities have been received.

6. DECISION TO BE MADE BY THE LICENSING ACT PANEL

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

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

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)*
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- suspend the licence for a period not exceeding three months;*
- revoke the licence.*

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.

11.27. *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 the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*
- *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 employing a person who is disqualified from that work by reason of their immigration status in the UK;*
- *For unlawful gambling; and*
- *For the sale or storage of smuggled tobacco and alcohol.*

11.28 *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.*

The Panel are asked to consider the seriousness of the issues disclosed and deal with this application by taking account of;

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

8. FINANCIAL IMPLICATIONS

8.1 There are no financial implications in relation to the review hearing.

9. LEGAL IMPLICATIONS

9.1 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. The decision taken by the panel should be appropriate and proportionate in addressing any undermining of the licensing objectives.

Any party at the hearing has a right to appeal the decision to the Magistrates Court.

10. COMMENTS OF THE STATUTORY FINANCE OFFICER

Please see 8.1 above

11. COMMENTS OF THE MONITORING OFFICER

Please see the comments at 9.1 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.

Report Author:	Telephone:	Date:
Chris Ward, Licensing Officer	01772 625330	10 May 2019