

Committee: Licensing Sub-Committee	Date: 19 September 2017	Classification: UNRESTRICTED	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application to Review the Premises Licence for Curry Bazaar, 77 Brick Lane, London E1 6QL Ward affected: Spitalfields and Banglatown
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1.0 Summary

Name and Address of premises: **Curry Bazaar
77 Brick Lane
London
E1 6QL**

Licence under review: **Licensing Act 2003**

- **Sale by retail of alcohol**
- **Provision of Late night refreshment**
- **The provision of regulated entertainment (recorded music only)**

Review triggered by: **Licensing Authority (now withdrawn)**
Representations: **Local Residents
Local businesses**

2.0 Recommendations

2.1 That the Licensing Committee considers the application for review and then adjudicates accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
<ul style="list-style-type: none"> • Guidance Issued under Section 182 of the Licensing Act 2003 • Tower Hamlets Licensing Policy • File 		Mohshin Ali 020 7364 5498

3.0 Review Application

- 3.1 This is an application for a review of the premises licence for Curry Bazaar, 77 Brick Lane, London E1 6QL. The review was triggered by the Licensing Authority. The Licensing Authority has now withdrawn its representation in regards to the review.
- 3.2 I have noted Paterson's guidance in regards to the Review in cases where relevant representations have been made to the review following the advertisement of it. It states as follows: ***"Representations arise as a consequence of the notification and advertisement of the application. Clearly in such a case we suggest (although it is not entirely beyond doubt), the authority must proceed with the review of the licence, even if the applicant has (for whatever reason) decided not to pursue the original application"***
- 3.3 The review application was due to be heard by the Licensing Sub-Committee on the 23rd August 2017. However, the hearing was adjourned due to the following reasons:
"The Sub Committee listened to an application made by Mr David Dadds, Licensee's Legal Representative who suggested that the application for Review no longer required a hearing as the applicant had withdrawn the application. Therefore any representations made to support the review should be dismissed as there was no application to consider. He stated that this must be the case as there was no application produced in the Agenda Pack. Ms Kathy Driver confirmed that she had withdrawn her representations and not the application itself.

Members sought legal clarification and were advised by Mrs Gurwinder Olive, Senior Licensing Lawyer, that under Section 52(2) of the Licensing Act, an Authority seized of a review application must have a hearing if any representations from interested parties remain and in this case it did even where the representations from the party triggering the review were withdrawn. She advised Members that in light of what Ms Driver had said it must be accepted that there was a live application for consideration. However it was accepted that the review application was not included in the report/agenda pack therefore Members would not be able to proceed with the hearing as it did not comply with the Hearing Regulations.

Decision

It was resolved that the matter be adjourned".

- 3.4 Please see **Appendix 1** for the letter of withdrawal by the Licensing Authority and the review application (with enclosures). It should be noted that the Council has withdrawn the prosecution for the Licensing Act

2003 Section 136 offence, on 12th August 2016, so the statements are no longer restricted.

3.5 The Police Licensing also withdrew their representation, please see **Appendix 2**.

3.6 However, representations were also received from other persons and therefore members will have to consider the remaining representations only.

4.0 **The Premises**

4.1 The premises licence was issued on 20th September 2005. A copy of the current licence is contained **Appendix 3**. On the 10th May 2017, an application was made to transfer the licence holder to Mohammad Foez Ahmad and the Designated Premises Supervisor Muhammad Abdul Kadir Ali has been in place since 5th August 2016.

4.2 The previous Licence holders Azirun Nessa and Mohammod Jubar Ahmad were in place since 5th March 2009.

4.3 The premise was subject to a previous review, brought by the Licensing Authority, which was heard by the Licensing Sub Committee on 12th May 2016. The decision was made to suspend the licence for three months and to remove the Designated Premises Supervisor. For members benefit the minutes of this meeting are contained in the review application (Exhibit B of Appendix 1).

4.4 Maps showing the premises, surrounding area and vicinity of local residents are included in **Appendix 4**.

5.0 **Representations**

5.1 This hearing is required by the Licensing Act 2003, because representations have been received from the following;

Responsible Authorities/other persons	Appendix
Mr Raju Ahmed (Nazrul Restaurant)	5
Kabir Hussain (Resident)	6
Azmal Hussain (Preem Restaurant)	7
Ibrahim Hoque (Resident)	8
David Cunningham (Resident)	9
Ed & Sarah Jenkins (Resident)	10

5.2 Members should note that the licensing authority received representations from two local businesses which were initially accepted. However, both businesses have since advised the licensing authority that their letters were sent in fraudulently from unknown sources. A Licensing Officer has visited both of the businesses to verify the identity

of the person making the representation and therefore these fraudulent representations are not included in this report.

- 5.3 In light of the above, the Licensing Officer sent letters to all the businesses and residents asking them to confirm that they had in fact made their original representation. All have now replied to confirm that this is the case, except Ibrahim Hoque (Appendix 8). A further letter was sent on the 13th June 2017 to advise him that Members will consider this when they attach weight to his representation (no response has been received).
- 5.4 On the 6th September 2017, the Licensing Officer wrote to all those who made a representation to update them with the following information:
- a) *Since the review was triggered on the 16th January 2017, a number of elements to the review have since occurred.*
 - b) *We received other representations (from other persons) which have transpired to be made fraudulently against the premises.*
 - c) *A transfer was submitted on 10th May 2017 to Mohammed Foez AHMAD and therefore Mrs Azirun NESSA and Mr Mohammed Jubar AHMAD are no longer the licence holders.*
 - d) *The Council has withdrawn the prosecution for the Licensing Act 2003 Section 136 offence, on 12th August 2016, following Counsel advice.*
 - e) *In light of the above, the Licensing Authority also withdrew the representations for review.*
 - f) *In addition, the Police Licensing also withdrew their review due to the lack of evidence following the successful appeal of the then manager regarding his conviction for assault.*
 - g) *The information contained in your representations is now old and I have noted that you did not attend the Licensing Sub-Committee hearing of 23rd August 2017 where you would have had an opportunity to amplify your representation.*
 - h) *In the circumstances, there will be no one to speak from a Licensing Authority and Police Licensing perspective. Therefore, you should consider your representation and the evidence you have submitted so far in terms of how much weight members may apply.*
 - a) *If you wish to continue with your representation, it would be wise for you to attend the Licensing Sub-Committee hearing scheduled for the 19th September 2017. Also, if you wish to expand on your representation the latest deadline for this is 6:30pm on the 18th September 2017.*

- 5.5 Mr Raju Ahmed (Nazrul Restaurant) was also advised that his injunction order application and claim for damages mentioned in his representation has been discontinued (according to legal advice) so any reference made to this should also be disregarded.
- 5.6 Azmal Hussain (Preem Restaurant) has submitted videos as part of his evidence. He was advised the following:
- a) *The video footages you submitted were viewed by the CCTV Manager and in conclusion, your video footage cannot be used as he has stated the following "the conditions in which these cameras have been pointed and used are in breach of a number of pieces of legislation around privacy and the use of CCTV, they are contravening the Data Protection Act and the business can be prosecuted for this. The recording of private conversations is very much not acceptable in the UK and whilst it is understood a premises may have CCTV to protect it's doors, windows and internal areas, the system must not be used to carry out surveillance of other areas, businesses, persons involved in these businesses".*
- 5.7 Similar video evidence were also submitted by Mr Raju Ahmed and Kabir Hussain. They were also advised that their video evidence could not be used for similar reasons. The witness statement of the CCTV Manager has been included as **Appendix 11** for Members information.
- 5.8 Essentially, the grounds of those making representations range from touting; illegal working; violent behaviour; unfit person to hold a licence. All of which meet one or more of the licensing objectives. Members will need to consider the weight of the evidence.
- 5.9 Only representations that relate to the following licensing objectives are relevant:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 5.10 In the view of the other persons and it is necessary to achieve the licensing objectives of the prevention of public nuisance and prevention of crime & disorder.

6.0 Review Explained

- 6.1 The Licensing Act 2003 was described by the Government at the time as “light touch” but as Baroness Blackstone stated in the Lords at the time of the second reading (26 Nov 2002) “Local residents and businesses as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or ultimately, revocation.”
- 6.2 The Home Office has issued guidance under Section 182 of the Licensing Act 2003 in relation to reviews and that is contained in **Appendix 12**. It is available on the Government’s website, www.homeoffice.gov.uk. It was last revised March April 2017.
- 6.3 Members are particularly asked to note the comments in relation Crime and Disorder. In particular the home office advice is that “The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted.”
- 6.4 In relation to its advice on representations the home office has also advised that “there is no requirement for other person or responsible authority to produce a recorded history of problems at a premises to support their representations.” It has issued guidance about Crime and Disorder. **See Appendix 13**.
- 6.5 Members should also note the Council’s Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in **Appendix 14**.
- 6.6 The home office issued guidance about the prevention of public nuisance and the pool of conditions which might be considered in relation to any identified problems is contained in **Appendix 15**.
- 6.7 The Council’s Licensing Policy in relation to Public Nuisance is contained in **Appendix 16**.
- 6.8 The Home Office has advised that in relation to reviews “It is important to recognise that the promotion of licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between those groups in a way that would undermine the benefits of co-operation. It would be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review.”

- 6.9 Other persons or a responsible authority can trigger a review at any time, but the grounds must be relevant to the licensing objectives. The form of the application, and the advertisement of the review are the subject of regulations (The Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005). In addition, the licensing authority has to satisfy itself of certain matters in relation to the Licensing Act 2003. The Health & Safety & Licensing Manager is the delegated officer who deals with this on behalf of the licensing authority. All the matters stated in 5.0 were considered before any representations were accepted for inclusion in this report.
- 6.10 The Licensing Act 2003 requires that the Licensing Authority satisfies itself that it should reject the grounds for a review because:
- The ground is not relevant to one or more of the licensing objectives
 - In the case of an application by a local resident that the application is frivolous, vexatious or repetitious.

7.0 **Review Advertisement**

- 7.1 The review was advertised by a blue poster, next to the premises, by the Licensing Section. This was periodically monitored by the Section to ensure it was on continuous display, and replaced as necessary. It was also advertised at Mulberry Place, 5 Clove Crescent, London E14 2BG.
- 7.2 The party that triggers the review must notify the licence holder and responsible authorities. The review documents were sent to the licence holders.
- 7.3 The procedure for a review can be summarised as follows:
- A review is triggered by a responsible authority or interested party
 - Consultation is conducted for 28 full days
 - Other responsible authorities or interested parties may join in the review
 - Members conduct a hearing
 - Members make a determination
 - All the parties to the review have the right of appeal to the magistrates court (i.e. the licence holder, the person who triggered the review and those who have made a representation).

8.0 Licensing Officer Comments

8.1 The Governments advice in relation to reviews is contained in **Appendix 12**. Members must consider all the evidence and then decide from the following alternatives:

- Take no further action as they do not consider it proportionate to do so
- Impose conditions (including altering existing permissions) that relate to problems which they consider have been identified and which are necessary and proportionate to ensure that the licensing objectives are met
- Suspend the licence for a period
- Revoke the licence completely

8.2 The licence should only be suspended or revoked if Members believe that alterations to the existing licence, including imposing new conditions does not have a reasonable prospect of ensuring that the licensing objectives are met.

8.3 Members should bear in mind that conditions may not be imposed for any purpose other than to meet the licensing objectives.

8.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”

8.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

9.0 Legal Comments

9.1 The Council’s legal officer will give advice at the hearing.

10.0 Finance Comments

10.1 There are no financial implications in this report.

11.0 Appendices

Appendix 1	Licensing Authority withdrawal of representation and a copy of the review application
Appendix 2	Police representations withdrawn
Appendix 3	Copy of existing licence
Appendix 4	Maps of the premises and surrounding area
Appendix 5	Representations from Mr Raju Ahmed (Nazrul Restaurant)
Appendix 6	Representations from Kabir Hussain
Appendix 7	Representation of Azmal Hussain (Preem Restaurant)
Appendix 8	Representation of Ibrahim Hoque
Appendix 9	Representation of David Cunningham
Appendix 10	Representation of Ed & Sarah Jenkin
Appendix 11	Witness statement of CCTV Manager
Appendix 12	Guidance issued under Section 182 by the Home Office for reviews
Appendix 13	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Crime and Disorder
Appendix 14	London Borough of Tower Hamlets Licensing Policy in relation to the prevention of Crime and Disorder
Appendix 15	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Public Nuisance
Appendix 16	London Borough of Tower Hamlets Policy in relation to the prevention of Public Nuisance