

Contains Confidential or Exempt Information	No
Report Title	Premises Licence Review hearing
Premises Details	Chalvey Off Licence Unit 4 Alexandra Plaza Chalvey Road West Slough Berkshire SL1 2NJ Premises Licence Number PL0004
Author(s)	Michael Sims Licensing Manager Regulatory Services
Purpose of Report	Regulatory / Review Hearing for Premises Licence

1. SUMMARY

On **3rd December 2018**, Debie Pearmain, Police Licensing Officer – Thames Valley Police, (“the Applicant”), brought a Review of the Premises Licence for Chalvey Off Licence, Unit 4, Alexandra Plaza, Chalvey Road West, Slough, Berkshire, SL1 2NJ

2. RECOMMENDATIONS

- 2.1 The Sub Committee are asked to determine the Review.
- 2.2 Where the Sub Committee considers action is appropriate the statutory options available are:
 - 2.2.1 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;
 - 2.2.2 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);
 - 2.2.3 remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - 2.2.4 suspend the licence for a period not exceeding three months;
 - 2.2.5 revoke the licence.

3. PRINCIPLES FOR MAKING DECISIONS

Context

- 3.1 As quasi-judicial body the Sub Committee is required to consider this matter on its merits and must act reasonably and rationally. The Sub Committee can only take into account relevant factors and must ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of the relevant facts, or the likelihood or the unlikelihood of some future event, the occurrence of which would be relevant. The Sub Committee must give fair consideration to the contentions of all persons entitled to make representation to them.
- 3.2 The Sub Committee can only consider matters within the report.
- 3.3 Members should note that the Sub Committee is meeting on this occasion solely to perform the role of Licensing Authority. As such Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the Council's related policies and guidance.
- 3.4 Members will be aware of the Council's Code of Conduct which requires them to declare interests. The Code applies to members when considering licensing issues. In addition as a quasi-judicial body, Members are required to avoid both actual bias and the appearance of bias.

Human Rights & Equality Act Duties

- 3.5 In determining the case, the Sub Committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998 and section 149 Equality Act 2010. The legislation makes it unlawful for a public authority to act in a manner which is incompatible with the European Convention of Human Rights.
- 3.6 When determining the case and considering imposition of conditions the Sub Committee must be satisfied that any decision which interferes with the rights of the Applicant or of others, only does so insofar as it is necessary to protect the rights of others and that no alternative decision would be appropriate.
- 3.7 The Sub Committee is specifically referred to the following Convention rights:
- 3.7.1 Article 6 (the right to a fair trial),
 - 3.7.2 Article 8 (the right to respect for private and family life)
 - 3.7.3 Article 1 of the First Protocol (the protection of property)

4. RELEVANT POLICY AND LEGISLATION CONSIDERATIONS

4.1 The procedure to be followed for the Review hearing is attached at **Appendix D**.

4.2 The amended guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 was published in April 2018, section 11 provides guidance on reviews and the salient points of that section that the Sub Committee must have regard to for Review Applications are detailed below:

11.1 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.

11.2 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.

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders 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 cooperation.

Powers of a licensing authority on the determination of a review

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

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.*

11.21 *For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.*

11.22 *Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.*

11.23 *Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.*

Reviews arising in connection with crime

11.24 *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.*

11.25 *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.

11.26 *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.*

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.*

4.3 The Sub-Committee should also consider and make use of the 'Yellow and Red Card' system as directed and recommended by The Department of Culture, Media and Sport (DCMS) and as approved by the Licensing Committee.

5. LICENCE SUMMARY

5.1 Chalvey Off Licence holds a Premises Licence number **PL0004** granted by Slough Borough Council. The Premises Licence holder and named Designated Premises Supervisor is a Mr Arandeep Padda, who holds a Personal Licence (number **PA7970**) also issued by Slough Borough Council. A copy of the premises licence is attached at **Appendix A**.

- 5.2 The DPS is responsible for the day to day management of the premises.
- 5.3 The Premises Licence authorises the carrying out of the Relevant Licensable Activity as follows:

J – Supply of alcohol for consumption OFF the premises only

- 5.4 The times the Licence authorises the Licensable Activities are:

Sunday to Thursday - 08.00am to 11.00pm
Friday and Saturday - 08.00am to 11.30pm

6. REASON FOR REFERRAL: REVIEW APPLICATION

- 6.1 The Applicant asking for the Review is the Police Licensing Officer for Thames Valley Police. Thames Valley Police are a Responsible Authority under the Licensing Act 2003. Any responsible authority may apply for a review of a Premises Licence if it is concerned about licenced activities.
- 6.2 The Applicant highlights a series of events concerning the premises from March 2014 to November 2018 that include;
- a) The manager was found in possession of suspected illegal/counterfeit tobacco and alcohol, as well as UK Alcohol Duty Paid stickers.*
 - b) Serving alcohol outside of permitted licensing hours.*
 - c) CCTV timing being incorrect.*
 - d) An ASP extendable baton being found in a private area of the premises*
 - e) Alleged intelligence of staff selling cigarettes and alcohol to underage children, selling single cigarettes and handing out plastic cups to members of the public who were using them to drink alcohol in the street.*
 - f) Mr Padda selling a bottle of white wine to an underage person during a joint agency test purchase operation without any questions as to their age or to request ID, and for which he was cautioned on the day and subsequently issued with a Police warning;*
 - g) At the time of the underage sales, Mr Padda was the only member of staff on the premises, which is in breach of condition 6 of the premises licence which states that there must be 2 members of staff at the premises after 6.00pm*
 - h) Mr Padda stating at a Police interview on 14.11.2018 that he does reject people quite often for alcohol and cigarettes and had refused someone the day before, but a review of the Refusals Register during the meeting showed no entries between 13.08.2018 – 17.10.2018..*

The applicant is recommending, because of the concerns of the management of the premises with Mr Padda being the DPS, the premises licence should be suspended for a period of time for the following conditions to implemented and checked by the Thames Valley Police Licensing Officer and Slough Borough Council Senior Licensing Officer.

1. Removal of Arandeep Padda as the DPS
2. Only multi-packs as produced by the manufacturer, of alcohol to be sold.
3. The Licensing Sub-Committee to issue a 'Yellow Card' to the licensed premises as a warning that if a further review is required and matters have not

improved the premises licence may be revoked. A 'Yellow Card' will be clearly displayed at the premises for a period of 12 months detailing the imposition of new conditions and that this warning has been given.

The full Review Application and supporting evidence are contained at **Appendices B and C respectively.**

6.3 The Licensing Authority is satisfied that this application for Review meets the appropriate legislative requirements within the Licensing Act 2003 and is therefore a valid application to be considered by the Licensing Sub Committee

6.3 There are various grounds on which a Review Application may be triggered and these are as follows (but not limited to):

- 1 or more sales to minors of alcohol or any other age restricted product
- Reports of anti-social behaviour linked to the premises
- Evidence of proxy sales
- Sales of alcohol outside trading hours
- Other crime and disorder connected to the premises
- Sales of counterfeit or substitute goods
- Offences under the Licensing Act 2003 including breach of conditions

6.4 The grounds for the Review relate to the Licensing Objectives below;

1. The prevention of crime and disorder,
2. The protection of children from harm

7 BACKGROUND INFORMATION

7.1 The review application details the background history of the premises.

8 REPRESENTATIONS RECEIVED

8.1 There has been no representations received to the Review Application from any Responsible Authorities or from any other persons.

9 APPENDICES

- Appendix A - Premises Licence
- Appendix B - Review Application
- Appendix C - Supporting information
- Appendix D - Procedure for Review hearing

10 Background papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 - (Revised April 2018)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy - December 2014-2019
- DCMS Guidance – Red and Yellow Card System