

Licensing Act 2003 - Premises Licence Review
Chadderton Bar and Grill, 422-424 Middleton Road, Chadderton,
Oldham, OL9 6PY

Report of: Executive Member - Neighbourhoods

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Reason for Decision

The purpose of this report is to inform Members of an application, by Home Office Immigration Enforcement, to review the premises licence for the Chadderton Bar and Grill, 422-424 Middleton Road, Chadderton, Oldham, OL9 6PY, which has been referred to the Panel for consideration.

Recommendations

Members are recommended to consider the review.

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1 Purpose of Report

- 1.1 The purpose of this report is to inform Members of an application, by Home Office Immigration Enforcement, to review the premises licence for the Chadderton Bar and Grill, 422-424 Middleton Road, Chadderton, Oldham, OL9 6PY, which has been referred to the Panel for consideration.

The Premises

- 1.2 The Chadderton Bar and Grill is located at 422-424 Middleton Road, Chadderton, Oldham, OL9 6PY. The Premises Licence Holder and Designated Premises Supervisor is Mr Mustafa Kemal Serbest.
- 1.3 A map of the location is attached at **Appendix 1**.
- 1.4 A copy of the existing premises licence is attached at **Appendix 2**

2 The Application

- 2.1 On the 22nd November 2018 the applicant, Home Office Immigration Enforcement, have applied for a review of the premises licence for the Chadderton Bar and Grill, a copy of the application is at **Appendix 3**. The last day for representations in relation to this application was the 20th December 2018.
- 2.2 The review was lodged on the following grounds:-

Prevention of Crime & Disorder

After receiving intelligence that the premises were employing illegal workers, an Immigration Enforcement visit was conducted on the 15th April 2016 at the Chadderton Bar and Grill.

During this visit, two persons were found working illegally.

One of the persons found working illegally was a director and co-owner of the business. He had no permission to be in the UK as his visa had expired. As such he had no permission to work. A civil penalty of £10,000 was served on the business for employing illegal workers, which remains outstanding.

Following receiving further intelligence of illegal working taking place at the premises, another visit was conducted on the 31st August 2018.

On this occasion two persons were again encountered working illegally, one of which was the director and co-owner of the business that had been encountered on the previous visit. He still did not have permission to work in the UK.

During the visit, a Closure Notice was served on the premises and the business was shut down until the following day when Immigration Enforcement attended court and obtained a compliance order putting in place conditions for carrying out staff checks.

In light of the two persons found working illegally during both visits to the premises, and in particular to the fact that one of the illegal workers encountered during both visits was the co-owner and director of the business, and was in the UK illegally, it is the view of the Home

Office Immigration Enforcement that the operation of this Premises Licence is failing to meet the licensing objective of the Prevention of Crime and Disorder.

2.3 As part of the review Home Office Immigration Enforcement are seeking revocation of the premises licence.

3 Representations

3.1 No representations have been received in respect of the application.

4 Licensing Policy

4.1 Members considering this application should take note of the Authority's Licensing Policy Statement when determining an application. However, the current policy, which commenced in 2015 and does not require updating until 2019 does not take into account specific matters of illegal working.

5 Secretary of State's Guidance

5.1 The revised guidance issued under section 182 of the Licensing Act 2003 – issued in April 2018 makes note of Home Office Immigration Enforcement acting as a responsible authority for the purpose of the Licensing Act 2003. Paragraph 9.25 of the guidance provides:-

The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

5.2 Chapter 11 of the guidance deals with reviews. Members attention is drawn to paragraphs 11.17 to 11.20 which provide:-

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:

- (i) 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;

- (ii) 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)¹⁰;
- (iii) remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- (iv) suspend the licence for a period not exceeding three months;
- (v) 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.

11.23 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.

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.

5.3 A full copy of the guidance will be available at the hearing.

6 Options

6.1 When determining the application Members, having had regard to the representations, may take such steps, as they consider appropriate for the promotion of the licensing objectives. The steps available to Members are:-

- a) To modify the conditions of the licence;
- b) To exclude a licensable activity;
- c) To remove the designated premises supervisor;
- d) To suspend the premises licence for a period not exceeding 3 months; or
- e) To revoke the licence

6.2 Any steps appropriate to promote the licensing objectives should be specified. If none of the steps are appropriate and proportionate, no action should be taken.

6.3 In arriving at a decision Members must have regard to the relevant provisions of national guidance and the licensing policy statement and reasons must be given for any departure. The decision should be based on the individual merits of the application.

7 Consultation

7.1 Consultation in accordance with the Act has taken place with all Responsible Bodies and notice has been given to allow for any representations from Interested Parties.

8 Legal Services Comments

8.1 In determining the application Members should have regard to the Authority's licensing policy statement and the Secretary of State's Guidance. The applicant for the review, the holder of the premises licence or any other person who made relevant representations in relation to the application have a right of appeal to the Magistrates' court. (A Evans)

9 Environmental and Health & Safety Implications

9.1 There are no environmental implications.

10 Equality, community cohesion and crime implications

10.1 The Council's 'Statement of Licensing Policy' takes into account these matters. All decision made by the Licensing Panel, must have regard to this policy and National Guidance.

11 Background Papers

11.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

File Ref: Records held in Directorate
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12 Appendices

Appendix 1 - Location Map
Appendix 2 - Existing Premises Licence
Appendix 3 - Review Application