

LICENSING SUB-COMMITTEE A – 9 AUGUST 2023

REVIEW OF A PREMISES LICENCE – PANDA RESTAURANT, 33 CHERTSEY ROAD, WOKING

Executive Summary

This report considers an application to review the Premises Licence (PL) for the above premises from the Home Office Immigration and Customs Enforcement (ICE) team.

Recommendations

The Committee is requested to:

RESOLVE THAT the report be considered and the application be determined accordingly.

The Sub-Committee has the authority to determine the above recommendation.

Background Papers:

Application form
Operating Schedule
Representations from Statutory Bodies and Interested Parties

Reporting Person:

Matthew Cobb, Senior Licensing Officer
Ext. 3650, E Mail: Matthew.Cobb@woking.gov.uk

Contact Person:

Matthew Cobb, Senior Licensing Officer
Ext. 3650, E Mail: Matthew.Cobb@woking.gov.uk

Date Published:

1 August 2023

Review of a Premises Licence – Panda Restaurant, 33 Chertsey Road, Woking

1.0 Summary of Proposal

Application Type: Review of Premises Licence under section 51 Licensing Act 2003

Variation: No

Site Address: 33 Chertsey Road, Woking, GU21 5AJ

Applicant Caroline Laird, Immigration Officer 18876, on behalf of South Central ICE Immigration Enforcement of the Home Office

Application Ref: 21/00215/PREMIS

2.0 Description of Premises and Existing Licence

2.1 Small restaurant located in the town centre, approximately 117m² in size.

2.2 The premises is licenced for alcohol (both on and off sales) as well as recorded music.

2.3 Current licensed hours of operation are:

Sale of alcohol Monday to Sunday 12:00 – 22:30

Recorded music Monday to Sunday 12:00 – 23:00

2.4 The premises has been, other than a brief period recently, a licenced premises since before 2005, however we do not have records to confirm exactly when, as the Local Authority took over responsibility from the Magistrates Courts in 2005, meaning all prior records remained with the Courts.

2.5 The previous licence was surrendered by the outgoing licence holder on the 5 August 2020. This meant that the current licence holder had to apply for a new premises licence, which they did so in November 2021. This licence, which is the current licence, was issued on the 15 December 2021.

2.6 The holder of the Licence is a limited company, Q&J Hospitality Ltd. The sole director of Q&J Hospitality Ltd is Mr Rongsen Yang.

2.7 The Designated Premises Supervisor is also listed as Mr Rongsen Yang.

2.8 The current Premises Licence is attached as **Appendix 1**.

3.0 The Review Application

3.1 On the 14 April 2023 a Home Office Immigration Customs Enforcement (ICE) team carried out an inspection of the premises following an allegation that the premises was employing illegal workers (i.e. those with no right to work in the UK).

3.2 The inspection identified three workers on the premises who had no right to work in the UK.

3.3 The Home Office ICE team submitted a review of this premises on the grounds that the Premises was failing to comply with the licensing objective relating to the prevention of Crime and Disorder.

- 3.4 A copy of the Home Office Review Application is attached as **Appendix 2**.
- 3.5 The Home Office Case Pack is attached as **Appendix 3**.
- 3.6 The supporting evidence provided by the Home Office is attached as the following appendices, organised in order of 'time' on the document:

Appendix 3A – Document Log for HC, Illegal Worker

Appendix 3B – Interview with HC, Illegal Worker

Appendix 3C – Interview with Rongsen Yang, Employer

Appendix 3D – Interview with Rongsen Yang, Employer (appears duplicate of Appendix 3C other than document creation time)

Appendix 3E – Interview with CZ, Illegal Worker

Appendix 3F – Admission of Illegal Entry

Appendix 3G – Interview with YJY, Illegal Worker

Appendix 3H – Evidence regarding entry by deception

4.0 Promotion of Licensing Objectives

- 4.1 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance;
 - The protection of children from harm.

5.0 Government/Home Office Guidance and Council Policy

- 5.1 Section 4 of the Licensing Act 2003 provides that in carrying out its functions, a Licensing Authority must 'have regard to' guidance issued by the Secretary of State under section 182.
- 5.2 Section 182 of the Licensing Act 2003 provides that the Secretary of State must issue guidance to Licensing Authorities on the discharge of their duties.
- 5.3 The Home Office has also issued guidance (Preventing illegal working in licenced premises and the Home Office role as a responsible authority in England and Wales) in relation to reviews (pages 36-46).
- 5.4 Members should also note the Council's Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in section 8.0.

Legal considerations

- 5.5 Members must have regard to the following:
- (i) The Guidance issued under Section 182 of the Licensing Act 2003. In particular, Section 9.31 to 9.44, Section 11.16 to 11.23 and 11.24 to 11.28 may guide member
 - (ii) The Council's Statement of Licensing Policy
 - (iii) The Licensing Act 2003.

6.0 The role of the Home Office as a Responsible Authority

- 6.1 The S182 Guidance (guidance produced by the Government to provide clarity on the Licensing Act) provides further information on the role of the Home Office and illegal working.
- 6.2 Paragraph 9.25 states that the Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol 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.
- 6.3 If a business has committed any immigration offences and/or received civil penalties, these will be considered as part of the licence application, and may be a ground for making a formal request to a licensing authority for a licence to be reviewed.
- 6.4 Section 2.6 states that the prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

7.0 Illegal Working in Licenced Premises

- 7.1 All employers have a responsibility to prevent those without lawful immigration status from working in the UK. The ability to work illegally is often the main driver of illegal migration. Working in the UK without the requisite permission ("illegal working") encourages people to break our immigration laws and provides the practical means for migrants to remain in the UK unlawfully. It often results in abusive and exploitative behaviour, the mistreatment of unlawful migrant workers, tax evasion and illegal housing conditions, including modern slavery in the most serious cases. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are in the UK lawfully.
- 7.2 Employers have a responsibility to prevent illegal working in the UK by ensuring that their employees have the right to work here. The illegal working provisions of the Immigration, Asylum and Nationality Act 2006 came into force on 29 February 2008. Section 15 of the Act allows the Secretary of State to serve an employer with a notice requiring the payment of a penalty of a specified amount where they employ a person who is:
 - subject to immigration control; and
 - aged over 16; and
 - not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:
 - (i) is invalid;
 - (ii) has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise; or

(iii) is subject to a condition preventing them from accepting the employment.

- 7.3 Consequently, it is clear that the requirement to carry out a right to work check is a legal requirement of all employers. At Woking Borough Council – for example – the Licensing Authority is required to check an applicants' right to work when they apply for Premises Licences, Personal Licences as well as Taxi and Private Hire Drivers Licences.
- 7.4 Since 28 January 2019, employers have been able to rely on the Home Office online service to establish a statutory excuse.
- 7.5 The requirement for the employer to check using the online system is not an onerous one and having used it many times as part of the Licensing requirements – we can confirm it takes about three to five minutes to complete.

8.0 Associated Guidance

- 8.1 The Section 182 Guidance provides more information in relation to Illegal Workers. The relevant paragraphs relating to illegal workers and the Home Office are attached as **Appendix 4**.
- 8.2 The excerpts from the S182 Guidance make it clear that illegal working is a serious offence in the UK and should be dealt with accordingly. Section 11.27 (as seen in Appendix 4) categorises 'illegal working' as having the same severity as such offences as illegal firearms, prostitution, racism, pornography, drug dealing and paedophilia.
- 8.3 Whilst this may seem excessive or unequal, to put illegal working in the same category as other abhorrent offences, it is not within our remit to interpret the laws and statutory guidance – but to follow it and apply it accordingly.
- 8.4 The S182 Guidance, having categorised the severity of illegal working, goes on to state that

“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.”

9.0 Policy Considerations

- 9.1 In making its decision, the Sub-Committee is obliged to have regard to the relevant national Guidance and the Council's own Licensing Policy. The Sub-Committee must also have regard to the application, to any and all of the representations made and the evidence it hears, and its duty under S17 Crime and Disorder Act 1998.

Crime and Disorder Act 1998 Section 17 - Duty to consider crime and disorder implications.

Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and (b) the misuse of drugs, alcohol and other substances in its area; and (c) re-offending in its area; and (d) serious violence in its area.

- 9.2 The Licensing Officer considered the following policies taken from the '*Licensing Policy for Woking Borough*' should be considered for this application.

From Woking Borough Council Licensing Policy 2021-2026

6.5 The Council can only attach conditions to licences where necessary to ensure the licensing objectives are served and may include conditions drawn from the Pool of Conditions relating to the licensing objectives contained in the guidance issued under the Act. When considering conditions, the Council will focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned and those matters which are within the control of the applicant on the premises and in the vicinity of those premises. Whether or not incidents can be regarded as in the vicinity of licensed premises is a question of fact and will depend upon the particular circumstances of the case.

6.6 The Council acknowledges that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are away from the premises and beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned.

7.0 The Licensing Objectives (Prevention of Crime and Disorder)

7.1 The Council will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises as they seek to enter or leave.

7.2 In addition to the requirement for the Council to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect of the exercise of those functions on, and to do all it reasonably can to prevent, crime and disorder in the Borough.

7.6 The Council recognises that licence conditions should not replicate offences that are set out in the Licensing Act or other legislation. With this in mind, the Council will, when considering an application for a premises licence upon the receipt of relevant representations, consider attaching conditions to licences and certificates to deter and prevent crime and disorder both inside and in the immediate vicinity of the premises. These may include conditions drawn from the Pool of Conditions relating to the prevention of crime and disorder. Any such conditions imposed will be tailored to the style and characteristics of the premises and the type of activities that take place there.

- 9.3 Section 11.19 of the Statutory Guidance recalls Section 52 of The Licensing Act 2003, and covers the powers of a licensing authority on the determination of a review

- 9.4 The Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives. Members must consider all the evidence and then decide from the following alternatives:

- (a) Take no further action as they do not consider it proportionate to do so

Review of a Premises Licence – Panda Restaurant, 33 Chertsey Road, Woking

- (b) modify the conditions of the premises licence (which includes imposing new conditions or any alteration or omission of an existing condition) that relate to problems which they consider have been identified and which are necessary and proportionate to ensure that the licensing objectives are met, for example by reducing the hours of opening or by requiring door supervisors at particular times; either permanently or for a period up to three months;
- (c) 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) either permanently or for a period up to three months;
- (d) remove the designated premises supervisor, for example, because it is considered that the problems are the result of poor management;
- (e) suspend the licence for a period not exceeding three months; or
- (f) revoke the licence.

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

9.6 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.

9.7 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.” The Court of Appeal in the case of *Hope and Glory v Westminster* para 41), confirmed that that licensing is an administrative function to which a balance of probabilities applies. This means that licensing committees can come to decisions that, on the balance of probabilities, something is more likely than not to be the case.

9.8 Section 11 of the S182 Statutory Guidance is attached within **Appendix 4**.

10.0 Summary

10.1 If the information provided by the Home Office is correct, and we have no reason at the time of writing this report to believe that it is not, then it is a simple fact that three workers were found on site who had no legal right to be working.

10.2 The law is very clear that this is a serious offence. This is evident in the relevant sections mentioned in Appendix 4, that go to highlight the severity to which illegal working should be treated.

10.3 The S182 guidance states that in cases where premises allow illegal workers, even in the first instance, that revocation should be seriously considered.

10.4 The primary role of the Licensing Authority (and, by association, the Licensing Committee) is to ensure that the four licensing objectives are met at all times. Whilst it is understandable to want to balance the need for employment, or someone’s personal situation when it comes to their business, we should not permit or excuse serious criminal activities being carried out, or prevent a licence being revoked because it may affect someone’s employment or their financial situation. These are things that the licence holder should have taken into consideration when the decision to employ illegal workers was made.

10.5 The guidance therefore makes it clear that revocation should seriously be considered in the first instance.

11.0 Implications

Financial

11.1 There are no significant financial implications arising from this report. The applicant, licence holder and any interested parties or responsible authorities who have made a representation have the right of appeal to a Magistrates' Court (within 21 days starting the day after the date a decision is reached) should they feel any decision is unjust. Although there is a risk that costs may be awarded against the Council where decisions are overturned, experience and previous cases shows that this is unlikely where the Council are shown to be acting in accordance with their duties as Licensing Authority based on information supplied at the time. The Court has the discretion as to whether to impose an order for costs and is not automatic given.

Human Resource/Training and Development

11.2 None.

Community Safety

11.3 Improving standards and ensuring compliance can potentially improve community safety in line with the Licensing Objectives as set out in the Licensing Act 2003

11.4 As highlighted in S7.1 of this report, permitting illegal working has very serious knock on effects which should be borne in mind when making any decisions.

Risk Management

11.5 The risks to the Council associated with determining an application are:

- Failure to undertake our statutory responsibilities within required timescales;
- Making a decision that could be challenged by the applicant via an appeal to the Magistrates Court with the possible consequence of costs being awarded against the Council; and
- Making a decision that compromises Community Safety.

11.6 These risks have been dealt with in the report under section 5.0 by highlighting that the Sub-Committee is required to determine this application for a premises licences under the Licensing Act 2003 having due regard to the four licensing objectives, national guidance, the local licensing policy, relevant representations and evidence presented at the hearings. Determining applications in this way will reduce the risk of the decisions of the Council being open to challenge via appeal to the Magistrates court and promote Community Safety in the Borough.

Sustainability

11.7 The four licensing objectives addressed in the Council's licensing policy, which the Sub-Committee is obliged to have regard to in making its decision, are in line with the Council's sustainability aims.

12.0 Conclusions

12.1 The Committee is asked to consider the review application, contents of this report and its appendices, the evidence and representations presented, answers to questions posed and deliver its decision with reasons.

REPORT ENDS