

SLOUGH BOROUGH COUNCIL

**Committee & Date: 30th January 2014
Licensing Sub Committee**

Contains Confidential or Exempt Information	No
Report Title	Premises Licence Review hearing
Premises Details	ROSHNI FOOD AND WINE 18 High Street, Slough. SL1 1EQ Premises Licence Number PL004859
Author(s)	Rachael Rumney Senior Licensing Officer Enforcement and Regulatory Services
Purpose of Report	Regulatory / Review Hearing for premises licence

1. SUMMARY

- 1.1 On the 13th December 2013, the Licensing Manager on behalf of the Licensing Authority brought a Review of the Premises Licence for Roshni Food and Wine, 18 High Street, Slough, SL1 1EQ.

2. RECOMMENDATIONS

- 2.1 The Sub Committee are asked to determine the Application.
- 2.2 Where the Sub Committee considers action is appropriate the 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 Committee is required to consider this matter on its merits and must act reasonably and rationally. The 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 Committee must give fair consideration to the contentions of all persons entitled to make representation to them.
- 3.2 The Committee can only consider matters within the report.
- 3.3 Members should note that the 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 Committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998 and Sc 149 Equality Act 2010. The Act 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 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 decisions would be appropriate.
- 3.7 The 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 F**.

4.2 The amended guidance issued under section 182 of the Licensing Act 2003 was published in June 2013, para 11 and the salient points that the 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 co-operation.”*

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 promote 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.*
- 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.*
- 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. 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. 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."*

4.3 The 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 Roshni Food and Wine the Premises Licence Holder and named Designated Premises Supervisor (DPS) is Mr Jagmohan Singh Chopra, who holds a Personal Licence (number H001445) issued by Hounslow Borough Council.

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 Activities as follows:

M - The sale by retail of alcohol for consumption Off the premises only

5.4 The times the Licence authorises the Licensable Activities are:

Monday to Sunday - 07.00am to Midnight

A copy of the current Premises Licence is attached at **Appendix A**.

6. REASON FOR REFERRAL: REVIEW APPLICATION

6.1 The Applicant asking for the Review is the Council's Licensing Manager on behalf of the Licensing Authority. Any responsible authority may apply for a review of a premises licence if it is concerned about licences activities. Where a Licensing Authority does act as a responsible authority and applies for a

review, there must be a separation of responsibilities to ensure procedural fairness and eliminate conflicts of interest. The Council has complied with the guidance issued under sc 182.

- 6.2 The Applicant maintains that in light of the recent under age sales, seizure of illicit cigarettes, breach of conditions and of the previous history and management of the premises, there is no other alternative than the premises being issued with a “Red Card” and for the Premises Licence to be revoked. The full Review Application and supporting evidence are contained at **Appendices B.**
- 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, 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 are:
1. The Prevention of Crime and Disorder,
 2. Public Safety
 3. The Protection of Children from Harm,
- 6.5 The grounds for the current Review Application are based on the following:
- 6.5.1 On 26th July 2013 Trading Standards and Licensing Officers conducted an under age sales test purchase operation at Roshni Food and Wine where one can of Gaymers Olde English Cider (500ml) and one can of Reds Premium Beer-Pineapple and Grapefruit Flavour (500ml) were sold to two under age volunteers.
- 6.5.2 The sale of alcohol to an underage person constitutes an offence under Section 146 of the Licensing 2003.
- 6.5.3 Officers found and seized 24 packets of ‘Jin Ling’ cigarettes, which are illicit cigarettes with no English Health Warning.
- 6.5.4 Illegal possession of the illicit cigarettes constitute offences under Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, as amended and the Consumer Protection Act 1987.

- 6.5.5 A single can of Special Brew lager was also sold to a Licensing Officer in breach of a specific condition on the Premises Licence.
- 6.5.6 During the course of the inspection of the premises a total of six breaches of conditions on the premises licence were identified.
- 6.5.7 Breaches of conditions on a Premises Licence constitute offences under section 136 of the Licensing Act 2003.
- 6.5.8 That the premises were subject to a previous Review Application in 2011 made by Thames Valley Police following the sale of alcohol to an underage person, where the Council's Licensing Sub Committee imposed a total of 11 new conditions on the Premises Licence, suspended the Premises Licence until the conditions had been implemented and issued the premises with a Yellow Card. The conditions are detailed on page 4 of the Premises Licence.

7 BACKGROUND INFORMATION

- 7.1 The Premises were subject to a previous Review Application made by Thames Valley Police in 2011 following the sale of alcohol to an underage person on 4th August 2011 and the breach of conditions on the Premises Licence.
- 7.2 At the previous Review hearing the Committee having carefully considered all the information available, decided to impose the following conditions on the Premises Licence:
 - 7.2.1 Sale of alcohol for consumption off the premises between 0900 hours and 2300 hours.
 - 7.2.2 In the absence of the Designated Premises Supervisor (DPS), a Personal Licence holder to be on the premises during the sale of alcohol.
 - 7.2.3 Two members of staff to be on the premises each evening from 1800 hours until close.
 - 7.2.4 Challenge 21 Policy to be in place.
 - 7.2.5 DPS or nominated person to be trained on how to work the CCTV system to the standard where the nominated person can download any potential evidence required by Thames Valley Police or relevant Agencies.
 - 7.2.6 To participate in 'Bottlewatch' or 'UV Marker Scheme' if requested by Police or Trading Standards.
 - 7.2.7 The applicant and their staff are able to converse with customers, the public and representatives of Statutory Agencies to a level that satisfies Police and Trading Standards they are able to meet the four licensing objectives.
 - 7.2.8 The Premises Licence holder or DPS shall ensure all staff receives training on a regular basis in relation to the four licensing objectives contained within the

Licensing Act 2003 for those authorised to sell alcohol. Written proof of all training shall be recorded and maintained.

- 7.2.9 All persons trained to sell alcohol shall be trained to the BIIAB Level 1 award in Responsible Alcohol Retailing (ARAR).
 - 7.2.10 The Designated Premises Supervisor or nominated person to attend the local Town Centre Pubwatch scheme where in existence.
 - 7.2.11 No single cans of alcohol to be sold.
 - 7.2.12 The Sub Committee also agreed that the premises licence is suspended until conditions 1 to 11 as outlined above had been implemented and checked to the satisfaction of Thames Valley Police and the Licensing Authority.
 - 7.2.13 In accordance with Central Government guidance and due to the seriousness of the incident highlighted the Sub-Committee also decided to issue the premises with a "Yellow Card". It was highlighted that if a further review is necessary and matters have not improved, the premises licence may be revoked.
- 7.3 A copy of the yellow card is attached at **Appendix E**.

8 REPRESENTATIONS RECEIVED

- 8.1 A full response to the Review Application has been received from Linda Corcoran - Enforcement Officer - Neighbourhood Enforcement Team (NET).
- 8.2 The response outlines the problems of anti-social behaviour, petty crime and public nuisance caused by 'street drinkers' in the area of Roshni Food and Wine and in particular Burlington Avenue and Burlington road. The response also requests that Roshni Food and Wine should take part in the 'Smart Water' Alcohol Product Marking Scheme and this should be imposed as a condition on the Premises Licence. The initial NET response is attached at **Appendix C**, and further supporting information detailing Survey Results and ASB Figures is attached at **Appendix D**.
- 8.3 No other responses have been received.

9. APPENDICES

Appendix A - Copy of Premises Licence for Roshni Food and Wine
PL004859

Appendix B - Review Application and supporting information made by
Michael Sims - Licensing Manager

Appendix C - Response / Representation from Linda Corcoran - NET.

Appendix D - Copy of Survey Results and ASB Figures - Linda Corcoran -
NET

Appendix E - Copy of Yellow card - Roshni Food and Wine

Appendix F - Procedure to be followed for Review hearing.

10. Background papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 - (Revised June 2013)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy - December 2010
- DCMS Guidance – Red and Yellow Card System
- LACORS Guidance to Trading Standards as a Responsible Authority: Reviews