

Contains Confidential or Exempt Information	No
Report Title	Premises Licence Review hearing
Premises Details	METRO FOOD AND WINE (SLOUGH) LIMITED 193 Farnham Road, Slough. SL1 4XS Premises Licence Number PL5277
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 2nd July 2014, the Licensing Manager on behalf of the Licensing Authority brought a Review of the Premises Licence for Metro Food and Wine, (Slough) Limited, 193 Farnham Road, Slough, SL1 4XS.

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 and any relevant representations made at the hearing.
- 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 1998 Act makes it unlawful for a public authority to act in a manner which is incompatible with the European Convention on 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 E**.

4.2 The amended guidance issued under section 182 of the Licensing Act 2003 was published in June 2014, paragraph 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 Paragraphs 11.16 to 11.23 of the section 182 Guidance are also relevant as they cover reviews arising in connection with crime. In particular paragraph 11.27 states:

"There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These [include] the use of the licensed premises... for the sale of smuggled tobacco and alcohol"

4.4 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.

4.5 The committee must also have regard to Slough Borough Council's Statement of Licensing Policy 2014-2015.

5. LICENCE SUMMARY

5.1 Metro Food and Wine (Slough) Limited is the Premises Licence Holder and named Designated Premises Supervisor (DPS) is Mr Kulwant Singh Gaga, who holds a Personal Licence (**number LBHIL1773**) issued by the London Borough of Hillingdon.

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 - 08.00am to 02.00am

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 the Review is necessary *"as this is the second such occasion that Mr Gaba has been subject of possession of illegal products and clearly shows his total disregard for the law and for public health and safety as counterfeit alcohol, and illegal cigarettes can pose a serious health hazard to any member of the public that purchases them."*
- 6.3 The applicant's recommendation because of the illegal activities that continue to take place at the premises is that the Premises should be issued with a Red Card and the Premises Licence revoked. The reasoning for this is the History and track record of the premises, particularly with regards to Mr Gaba's involvement in the business.
- 6.4 The grounds for the Review Application being made are the Licensing Objectives of the Prevention of Crime and Disorder and Public Safety. The applicant does not feel that there are any conditions that can be imposed on the licence by the Licensing Sub Committee that would promote the four Licensing Objectives or to combat the illegal activities taking place. The full Review Application and supporting evidence are contained at **Appendix B**.
- 6.5 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
- 6.6 Responsible authorities may ask for a review because of a matter or matters arising at the premises in connection with any of the four licensing objectives. Such matters may include:
- 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
- 6.7 The grounds for the Review are:
1. The Prevention of Crime and Disorder,
 2. Public Safety
- 6.8 The applicant asserts the following in support of the Review Application:

- 6.8.1 Since 2007 the previous licence holder, the current licence holder, Mr Gaba and the company have been prosecuted for possession of counterfeit alcohol and illegal cigarettes on a number of occasions.
- 6.8.2 The most recent seizure was on 8th January 2014 where 150 packets of illegal cigarettes were seized.
- 6.8.3 The Previous history and current operation of the previous clearly show continued illegal activities taking place.
- 6.9 In light of the above assertions, the applicant is of the opinion that the only course of action that can be taken to address continued illegal activities is for the Premises Licence to be revoked.

7 BACKGROUND INFORMATION

- 7.1. The application sets out the following background information.
- 7.2. In 2007 the previous licence holder was convicted of possession of counterfeit alcohol and in 2009 he was further convicted along with a staff member and the company for possession of illegal cigarettes.
- 7.3. Mr Gaba became the owner of the business in November/December 2009.
- 7.4. On 29th April 2010 Trading Standards officers seized counterfeit Bollinger Champagne from the premises and both Mr Gaba and Metro Food and Wine Limited were prosecuted and convicted of a number of offences relating to this seizure.
- 7.5. In May 2010 Mr Gaba made application to transfer the Premises Licence, vary the DPS to himself and change the name of the premises to Metro Food and Wine (Slough) Limited.
- 7.6. On 8th January 2014 Trading Standards officers again visited the premises and seized 150 packets of illegal cigarettes which were hidden under shelving in the front store. All the cigarettes carried no English health warnings and bore no statutory pictorial health warnings.
- 7.7. Possession of the above items constitute offences under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, Tobacco Products (manufacture, Presentation and Sale)(Safety) Regulations 2007 and the Consumer Protection Act 1987.
- 7.8. Mr Gaba will be subject of legal proceedings for possession of the above illegal cigarettes.

8 REPRESENTATIONS RECEIVED

- 8.1 A full response to the Review Application has been received from Debbie Pearmain the Thames Valley Police Licensing Officer in support of the application and the recommendation of revocation. The full response is

attached at **Appendix C**

- 8.3 A full response has also been received from Mr Dean Cooke on behalf of Trading Standards as a Responsible Authority again supporting the application and recommending a Red Card being issued. The full response is attached at **Appendix D**.
- 8.4 A response has been received from Royal Berkshire Fire and Rescue Service with no comments.

APPENDICES

Appendix A - Copy of Premises Licence for Metro Food and Wine (Slough) Limited PL5277

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

Appendix C - Response / Representation from Thames Valley Police.

Appendix D - Response / Representation from Trading Standards

Appendix E - Procedure for a Licensing Sub Committee hearing

Background Papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 - (Revised June 2014)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy - December 2014
- DCMS Guidance – Red and Yellow Card System
- LACORS Guidance to Trading Standards as a Responsible Authority: Reviews