

**Licensing Sub Committee – 10th
December 2018**

Contains Confidential or Exempt Information	No
Report Title	Premises Licence Review hearing
Premises Details	BAR H 254 High Street Langley Slough Berkshire SL3 8HA Premises Licence Number PL4384
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Purpose of Report	Regulatory / Review Hearing for Premises Licence

1. SUMMARY

On **23rd October 2018**, David Stride, Housing and Enforcement Officer – Neighbourhood Enforcement Services, (“the Applicant”), brought a Review of the Premises Licence for BAR H, 254 High Street, Langley, Slough, SL3 8HA.

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 M.**

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 and the salient points 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.*

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 BAR H holds a Premises Licence number **PL4384** granted by Slough Borough Council. The Premises Licence Holder is a company called 'Galaxy Corporation (UK) Limited' and the 2 named company directors are Mr Anil Jnagal and Mr Surinder Jnagal. The named Designated Premises Supervisor (DPS) is Mr Ajay Jnagal, who holds a Personal Licence (number LBHIL2586) issued by the London Borough of Hillingdon. A copy of the premises licence is attached at **Appendix J**.

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:

- A – Performance of play (indoors)*
- B – Exhibition of films (indoors)*
- C – Indoor sporting event*
- D – Boxing and wrestling entertainment (Indoors)*
- E – Performance of live music (indoors)*
- F – Playing of recorded music (Indoors)*
- G – Performance of dance (Indoors)*

- H – Entertainment of a similar description to that falling within E, F, or G (Indoors)*
I – Late night refreshment (Indoors)
J – Supply of alcohol for consumption ON and OFF the premises

5.4 The times the Licence authorises the Licensable Activities are:

- Sunday to Thursday - 10.00am to Midnight*
Friday and Saturday - 10.00am to 2.00am
Non Standard Timings - 10.00am to 2.00am
All Bank Holidays
Christmas Eve - 10.00am to 2.00am
New Year's Eve - 10.00am to 2.00am

Late night refreshment commences at 11.00pm with terminal hours as all other licensable activities.

6. REASON FOR REFERRAL: REVIEW APPLICATION

6.1 The Applicant asking for the Review is the Housing and Enforcement Officer – part of the Neighbourhood Enforcement Services, a Slough Borough Council Responsible Authority. Any responsible authority may apply for a review of a Premises Licence if it is concerned about licenced activities.

6.2 The Applicant highlights that;

- (a) Between January 2009 and September 2018, 7 cases of noise related nuisance have been reported relating to Bar H. Although warnings and advice have been given it has been difficult to pursue the complaints due to the complainants feeling and being intimidated by the visitors and occupants.*
- (b) Most recently the continued complaints have resulted in Neighbourhood Enforcement out of hours Officers attending the area of Bar H and witnessing the noise nuisance from the premises and associated anti-social behaviour.*
- (c) Persistent noise complaints resulted in a Noise Abatement Notice being served on the manager and Galaxy Corporation (UK) Limited.*
- (d) Further noise complaints have resulted in the Noise Abatement Notice being breached.*
- (e) Thames Valley Police have a total of 6 reports of crime and disorder relating to the premises between March 2018 and August 2018 (See Appendix G)*
- (f) It should be noted that the premises licence has a specific condition that a noise limiter must be installed. The manager has been unable to say if this is the case and the Neighbourhood Enforcement Team have no record of being notified of the installation of noise limiter or inspecting one.*

The applicant recommends that due to the persistent noise complaints, service of a Noise Abatement Notice, breach of the Noise Abatement Notice and out of hours officers witnessing breach of the Noise Abatement Notice the premises licence should be revoked.

The full Review Application and supporting evidence are contained at **Appendices A1 and A to I 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. Public Safety

7 BACKGROUND INFORMATION

- 7.1 The Premises of Bar H have previously been subject of a review of the premises licence.
- 7.2 In 2010 Thames Valley Police made an application to review the premises licence on the grounds of;
- a) The prevention of crime and disorder
 - b) Public Safety
 - c) The prevention of public nuisance
 - d) The protection of children from harm

A copy of the original review application is attached at **Appendix K**.

The premises licence holder at the time was Galaxy Corporation (UK) Limited and Mr Anil Jnagal was a director of the company at the time.

- 7.3 On 14th June 2010 the Slough Licensing Committee having carefully considered all the information available decided to revoke the premises licence.
- 7.4 An appeal against the revocation was subsequently lodged and heard at Bracknell Magistrates Court on 18th January 2011. The appeal was allowed with amendments to the conditions on the premises licence. The Court Attendance Note detailing the outcome of the appeal and the amendments to the conditions on the premises licence is attached at **Appendix L**.

7.5 In September 2016 an application to vary the premises licence was made to remove conditions 87 to 91 from the premises licence, as detailed in the Court Attendance Note. As there were no objections to the variation, the application was granted.

8 REPRESENTATIONS RECEIVED

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

8.2 There have been 14 email responses received from patrons of Bar H in support of the premises which are attached at **Appendix N**.

APPENDICES

- Appendix A1 - Review Application
- Appendix A - Officer Delegations
- Appendix B - Noise diaries
- Appendix C - Letter to Bar H dated 24th July 2018
- Appendix D - Inspection Sheet
- Appendix E - Letter to Ajay Jnagal Dated 17th August 2018
- Appendix F - Copy of pocket book notes
- Appendix G - Email from Thames Valley Police
- Appendix H - Witness Statement Dorota Lega
- Appendix I - Witness Statement Richard Palacio
- Appendix J - Premises Licence PL4384
- Appendix K - Review Application 2010
- Appendix L - Court Attendance Note 2011
- Appendix M - Procedure for Licensing Sub Committee
- Appendix N - Email responses from patrons of Bar H in support of the premises.
- Appendix O – Witness Statement Greg Edmond

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