

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION FOR A REVIEW OF A PREMISES LICENCE – INDIAN TREE, 14
MARKET PLACE, RINGWOOD BH24 1AW.**

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on 10 March 2023**

1. Members of the Licensing Sub-Committee

Councillor Steve Clarke (Chairman)
Councillor David Harrison
Councillor Joe Reilly

2. Parties and their Representatives attending the Hearing

Applicants:

PC Mark Hawley, Hampshire Police

Supporters:

Timothy Kemp, Immigration Office

3. Other Persons attending the Hearing

Council Officers:

Ms Christa Ferguson - Licensing Manager

4. Officers attending to assist the Sub-Committee

Richard Davies – Legal Advisor
Joe Tyler - Clerk

5. Absence of Parties

At the outset of the hearing it was noted by the Sub-Committee that the Premises Licence Holder was absent as set out below:

Those who had indicated that they would not be attending:

Mr Adib Bacchu – Premises Licence Holder (“the Licence Holder”)
The Licence Holder was not present at the listed hearing starting time and the Sub-Committee invited the Licensing Manager to explain recent developments. The Licensing Manager described how the Licence Holder had emailed the Clerk (ie Mr Tyler, Democratic Services Officer) in the early hours of 9 March 2023 saying that

he wanted to surrender his licence and not attend the hearing. In response, the Licence Manager replied by email on the afternoon of 9 March 2023, with an excerpt from the Licensing Act 2003 (“the Act”) to describe what the Licence Holder had to do to surrender his licence. She also confirmed that, at the time of sending her email, the hearing was proceeding and if he was not intending to appear, he should explain why and that this would be considered by the Sub-Committee when deciding whether to proceed.

The Sub-Committee then invited the Legal Advisor to provide legal guidance on the situation. The Legal Advisor explained that, in relation to the surrender of a premises licence, section 28 of the Act (ie the excerpt emailed by the Licensing Manager to the Licence Holder, referred to above) stipulated that surrender comprised of (i) a notice stating the intention to surrender the licence; and (ii) the notice had to be accompanied by the premises licence itself. At the time of the hearing, the Licence Holder had not submitted the premises licence. Therefore, the licence had not been formally surrendered by the Licence Holder.

Secondly, the Legal Advisor referred to a telephone conversation that he had been informed had taken place between the Licence Holder and the Clerk on the morning of 9 March 2023, where the Licence Holder said he ‘wasn’t feeling well’ and that he wanted to surrender his licence and asked if the hearing would go ahead in his absence. The Clerk had explained that he could not advise the Licence Holder and that the Licence Manager would need to comment on the next steps. This the Licence Manager did by her email of the afternoon of the same day, described above.

The Legal Advisor therefore summed up that (i) the licence had not been surrendered; (ii) the Licence Holder had given clear indication that he did not intend to attend the hearing; and that (iii) he had not provided any medical certificate to explain why he was medically unable to be present. In the circumstances, the Legal Advisor concluded that, as there was no apparent legal reason why the hearing could not proceed under the Licensing Act 2003 (Hearings) Regulations 2005, it was open to the Sub-Committee to continue with the hearing if it felt it was in the public interest.

The Sub-Committee considered whether it was necessary in the public interest to adjourn the hearing or to hold the hearing in the absence of the Licence Holder and took into account the fact that the Licence Holder had not provided any compelling reason as to why he could not attend the hearing. The Sub-Committee therefore decided to proceed with the hearing in the Licence Holder’s absence and take into consideration his written representations in reaching its decision.

6. Decision of the Sub-Committee

The purpose of the hearing was to determine an application for the review of a premises licence made under section 51 of the Act in respect of the Indian Tree restaurant. The Sub-Committee decided to revoke the Licence Holder’s premises licence for the Indian Tree (and consequently, Mr Chowdhury would also be removed as the Designated Premises Supervisor (“DPS”)).

7. Reasons for the Decision

The hearing was to determine an application from Hampshire Police (“the Applicant”) for a review of the premises licence in respect of the Indian Tree which operates as a restaurant. The restaurant has held a premises licence since June 2010.

The application was made as the premises was failing to uphold the licensing objectives, primarily the prevention of crime and disorder.

The Sub-Committee considered the application along with the evidence, both written and oral, supplied by the Applicant and all those who had made relevant representations.

In reaching its decision, the Sub-Committee also had regard to:

- The Home Office Guidance issued under section 182 of the Licensing Act 2003,
- The Council's own Statement of Licensing Policy,
- The steps that are appropriate to promote the licensing objectives,
- Relevant representations presented by all parties

At the hearing, the Sub-Committee carefully listened to all the evidence that was provided, and considered what action, if any, was appropriate for the promotion of the four licensing objectives namely:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public Safety
- Protection of children from harm

The Sub-Committee noted correspondence received after the main agenda pack was circulated, at Appendix 8 (from Mr Timothy Kemp, Immigration Office) and Appendix 9 (from the Licence Holder). The Sub-Committee also considered video footage, supplied by the Applicant, documenting the joint visit to the premises by Home Office Immigration Enforcement Officers and the Police on 12 January 2023.

The Applicant reported that there were a large number of failings and licence breaches found at the visit, including:

- The failure to ensure that employees had legal working status,
- The failure to keep or produce the necessary records required to comply with licence conditions,
- The failure to produce staff training records,
- The failure of the DPS to perform or be aware of his duties required under the licence and particularly those added to the licence following the Review Hearing of 18 May 2017.

The Sub-Committee considered the licensing history of the premises and, in particular, the licence review of 18 May 2017. The Sub-Committee noted the outcome of this review and the conditions attached to the licence, which had been specifically suggested by the Licence Holder's legal representative at the 2017 hearing, namely:

- a. That the Designated Premises Supervisor undertakes full responsibility for the recruitment of all workers employed at the premises on a full time or temporary basis.
- b. The Designated Premises Supervisor undertakes right to work checks on all staff employed at the licensed premises;
- c. That copies of any document checked as part of a right to work are retained at the premises at all times the premises are open; and
- d. That copies of the right to work documentation are made available to the Licensing Authority, the Home Office and the Police for inspection on the premises, without notice at any time.

The Sub-Committee noted that during the Immigration Enforcement and Police visit on 12 January 2023 no records of staff checks, staff training or alcohol sales or refusals were made available; and that the arrest made during this visit was the 14th arrest for immigration offences at this premises since 2012.

The Sub-Committee also noted the number and status of all Home Office Civil Penalties issued at the business address since the first intelligence led visit by Immigration Enforcement in 2015. The Immigration Officer stated that the total amount of outstanding penalties was approximately £173,000 (approximately £2,000 had been paid from penalties of £175,000).

The Sub-Committee viewed the above failings as a pattern of unacceptable behaviour, demonstrated through the lack of compliance and adherence to the conditions set, following the review hearing of May 2017. The Sub-Committee concluded that the DPS's extensive failures in performing his duties (ie his inability to produce evidence of any training records, right to work checks or alcohol sales or refusal records) indicated that the Licence Holder had no regard for the licensing objectives and laws, nor the immigration laws.

The Sub-Committee also felt that this level of disregard extended to the DPS whom they concluded was not a fit and proper person to act in this capacity. The Sub-Committee felt that, regardless of the Licence Holder's failings, the DPS would have been removed in any event and that he should not be a DPS in any other premises. These amount to significant and serious breaches of regulations over a sustained period of time which the Sub-Committee emphasised would not be tolerated.

It was also a source of grave concern for the Sub-Committee to note the several referrals made to other responsible authorities, including Hampshire Fire and Rescue Service (based on blocked fire escapes and fire loading of combustible materials), Environmental Health at the New Forest District Council (officer observed a number of food safety violations, mainly lack of cleanliness); and Housing at the New Forest District Council (as the residential area above the restaurant appears to be an unlicensed House of Multiple Occupancy).

In view of the comprehensive breaches and failings outlined above, and the serious disregard for responsibilities as a premises licence holder, the Sub-Committee felt it had no choice but to revoke the premises licence.

As a final observation, the Sub-Committee wished to voice their frustration and concern about avoidance of the payment of fines by businesses. The Sub-Committee note that in this instance the unpaid fines equated to circa £173,000 due to the apparent limitations of the law as it stands.

Date: 15 March 2023

Licensing Sub-Committee Chairman: Cllr S Clarke

FOR OFFICE USE ONLY

Decision notified to interested parties on 15 March 2023.