

LICENSING SUB-COMMITTEE – 9 JULY 2020

APPLICATION TO REVIEW A PREMISES LICENCE

INDIA COTTAGE, 35 CHRISTCHURCH ROAD, RINGWOOD

1. INTRODUCTION

- 1.1 An application for the review of a Premises Licence under Section 51 of the Licensing Act 2003 ('the Act') was received from Hampshire Constabulary ('the Police') on 18 May 2020. The application is for the review of the licence for India Cottage, 35 Christchurch Road, Ringwood, BH24 1DG and is provided in **Appendix 1**.
- 1.2 At any stage, following the grant of a premises licence a Responsible Authority, or any other person, may ask the Licensing Authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

Those objectives being:-

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

2. BACKGROUND INFORMATION

- 2.1 India Cottage is an Indian Restaurant located on Christchurch Road, Ringwood. The premise has held a licence, issued under the Act, since November 2005, and had operated under previous legislation prior to the introduction of the Act.
- 2.2 In January 2020, the Licensing Authority received an application from Mr S Mannan, Premises Licence Holder and Designated Premises Supervisor for India Cottage to vary the licence, to include the outside area. Relevant representations were received in response to this application and, therefore, a Licensing Sub-Committee determined the application on 13 February 2020. The current licence is presented in **Appendix 2**.
- 2.3 The restaurant has seating for 54 customers internally and has a rear outdoor area for an additional 16 patrons. There are also two dining beach huts to the rear of the property which each can seat four persons. The roof of the external seating area is of a corrugated Perspex construction and heaters are provided for customer comfort.

3. CONTRAVENTIONS

- 3.1 On Saturday 25 April 2020 at 19:15, PC Swallow and PC Hawley visited India Cottage whilst on patrol in Ringwood. At the time of the visit, there were seven people on the premises, Mr Mannan and another member of staff and five customers (which included a child) who were in the outside garden area.
- 3.2 As the officers entered the premise, they witnessed two male customers with glasses of beer in front of them. When questioned, Mr Mannan confirmed the customers were waiting in the outside seating area for a takeaway meal and had asked for a drink whilst waiting, which he had provided. CCTV footage viewed at the time of the visit confirmed that this sale of alcohol, which was consumed on the premise was not an isolated incident.

- 3.3 Statements from both Police Constables are provided in **Appendix 3** and in addition, footage from body worn cameras worn by the officers is provided.
- 3.4 The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ('the Regulations'), came into force on 26 March 2020 (replacing the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 which had previously come into force on 21 March 2020), and required all restaurants and bars to cease selling food and drink for consumption on the premises (see **Appendix 4**, Regulation 4). The outdoor seating area is considered as part of the premises. In accordance with the Regulations, a person who without reasonable excuse contravenes a requirement of Regulation 4 commits a criminal offence which would result in a fine on conviction in a Magistrates Court. A restaurant can continue to provide food or drink (with the correct licence) for consumption off the premises i.e.. as a takeaway. However, condition 18 on the premises licence states that "Alcohol shall not be sold or supplied on the premises otherwise to persons taking table meals and for consumption by such a person as ancillary to their meal" and the licence does not permit off sales (see **Appendix 2** premise licence).
- 3.5 During this pandemic and emergency situation, the legislation and current licence prevents India Cottage from selling alcohol for consumption on or off the premises and food can only be sold for consumption **off** the premises.
- 3.6 Sgt Rob Cohen reported the offences witnessed by PC Swallow and PC Hawley to the Licensing Manager on 28 April 2020 and suggested that the Council may wish to consider serving a Prohibition Notice in accordance with the Regulations, supported by the Police.
This was subsequently discussed with the Food and Safety Team Manager (Ben Stockley) and Service Manager (Joanne McClay).
- 3.7 On 1 May 2020 a Prohibition Notice was served on Mr Mannan, under the Regulations 2020 which required, with immediate effect, that he cease the selling of food or drink for consumption on the premises. Failure to comply with the Prohibition Notice without reasonable cause is a criminal offence which would result in a fine on conviction in a Magistrates Court. The Notice is provided as **Appendix 5**.
- 3.8 Following receipt of the Notice, Mr Mannan contacted the Licensing Service on 7 May 2020 for further information. He was advised by the Licensing Manager that the restrictions were to protect against the risks to public health arising from coronavirus and that he must comply with the conditions imposed to prevent further action being taken by the Council. The email is provided in **Appendix 6**.

4. APPLICATION TO REVIEW THE LICENCE

- 4.1 The Police Licensing Officer (PC Swallow) submitted an application for the review of the premises licence on 18 May 2020.
- 4.2 The Police, in their review application, seek to remove the licensable activity (the sale and supply of alcohol) from the Premises Licence.
- 4.3 In accordance with S51(3)(a) of the Act, copies of the application and accompanying documents were also served on the Premises Licence Holder and all other Responsible Authorities.
- 4.4 The Licensing Authority advertised the application as required, thereby inviting representations from any Responsible Authorities or other persons.

5. REQUIREMENTS FOR A HEARING

- 5.1 Before determining the application for review, the Licensing Authority must hold a hearing to consider it.
- 5.2 Members are referred to statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003 dated April 2018, in particular section 11 which provides guidance on Review applications.

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

- 5.3 In determining the application, the Licensing Sub-Committee must give appropriate weight to:
- 1) The steps that are appropriate to promote the licensing objectives;
 - 2) The presentations and written material presented by all parties;
 - 3) Home Office guidance;
 - 4) The Council's own Statement of Licensing Policy.

6. REPRESENTATIONS RECEIVED

- 6.1 No other representations in support of the application, or the premises, have been received during the 28 day representation period.

7. THE HEARING

- 7.1 This hearing is governed by the Licensing Act 2003 (Hearings) Regulations 2005. These Regulations provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.
- 7.2 The applicant (The Police) and the Premises Licence Holder have been invited to this meeting and have been provided with this report, accompanying documents, Police body-worn camera images and hearing procedures.
- 7.3 The applicant and the Premises Licence Holder and /or his representative are entitled to address the Sub-Committee and to ask questions of the other party.

8. RIGHT OF APPEAL

- 8.1 It should be noted that the applicant and the Premises Licence Holder may appeal the decision made by the Licensing Sub-Committee to the Magistrates' Court. The appeal must be lodged with the Magistrates' Court within 21 days of the notification of the decision.
- 8.2 The determination does not have effect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.

9. CONCLUSION

9.1 The Licensing Sub-Committee must, having regard to the application and any relevant representations, take such steps (as set out in section 52 (4) of the Act, as it considers appropriate for the promotion of the licensing objectives. Therefore, Members may:

- Modify the conditions of the licence (either permanently or for a temporary period not exceeding three months);
- Exclude the sale of alcohol (either permanently or for a temporary period not exceeding three months);
- Remove Mr Mannan as the Designated Premises Supervisor;
- Suspend the licence for a period not exceeding three months;
- Revoke the licence; or
- Take no further action

10. RECOMMENDATION

10.1 That, having heard the representations from all parties, both written and oral, the Licensing Sub-Committee determines the review application submitted by Hampshire Constabulary.

11. APPENDICES

Appendix 1- Review application

Appendix 2- Current Premises Licence

Appendix 3- Statements provided by PCs Swallow and Hawley

Appendix 4- The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Appendix 5- Prohibition Notice

Appendix 6- Email to Mr Mannan from the Licensing Manager

Further information:

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