

Cheltenham Borough Council

Alcohol and Gambling Licensing Sub-committee – 4 February 2019

Licensing Act 2003: Determination of Application for the transfer of a premises licence

India Lounge, 12 Suffolk Parade, Cheltenham

Report of the Licensing Team Leader

1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply to transfer an issued premises licence.

1.2 In this case, an application to transfer a premises licence was received on 4 January 2019 from Mr Ansar Ali in respect of India Lounge, 12 Suffolk Parade in Cheltenham. A copy of the application is included at **Appendix A**.

1.3 Implications

1.3.1 Legal A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

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2. Application (Ref. 18/03318/PRMTFR)

2.1 Applicant: Mr Ansar Ali

2.2 Agent: N/A

2.3 Premises: India Lounge, 12 Suffolk Parade, Cheltenham, Gloucestershire, GL50 2AB

3. Consultation

3.1 A relevant objection was received from the Home Office acting as responsible authority in relation to this application. A copy of the representation is attached at **Appendix B**.

4. Local Policy Considerations

4.1 The Council's adopted licensing policy statement (Council 10/12/2015) includes the following:

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- i) **Each objective is of equal importance** and the licensing authority has developed policies relating to each objective. The objectives are the only matters to be taken account in determining applications and applying conditions.
- ii) The licensing authority will only apply terms and conditions to licences which promote one or more of the licensing objectives and are relevant to the individual circumstances of the application. Conditions may be drawn from those set out in Appendix B and / or tailored to particular circumstances and they will be focused on matters within the control of the individual licensees and others granted relevant permissions.
- iii) The licensing authority will expect all individual applicants to address the licensing objectives in their operating schedule having regard to the premises, the licensable activities to be provided, the operational procedures, the nature of the location and the interests of the local community. The licensing authority expects that any conditions that are necessary will, in the first instance, be identifiable from prospective licensees or certificate holders' risk assessments.
- iv) Applicants will have to translate their assessments into measures which promote one or more of the licensing objectives and record them in their operating schedule.
- v) The licensing authority will not impose any conditions unless, following the receipt of relevant representations, it has used its discretion at a hearing and been satisfied of the validity of those concerns.
- vi) The licensing authority will consider every application on its individual merits with regard to this policy statement and to the Licensing Committee's Probity Code. The licensing authority will seek to balance the needs of the wider community, local community and commercial premises and activities, against those who may be concerned about adverse impacts from licensed premises. The views of vocal individuals or groups will not necessarily prevail over the general interests of the community. In every case the licensing authority will focus on disproportionate or unreasonable impacts of the licensable activities on people living, working and sleeping in the vicinity.

5. National Guidance

5.1 Statutory guidance has been issued under Section 182 of The Licensing Act 2003. The sub-committee must have regard to the guidance when discharging its functions under the Act. Relevant extracts from the guidance are below.

Licensing objectives and aims

5.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

5.3 The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

5.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

Each application on its own merits

- 5.5 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Home Office Immigration Enforcement acting as a responsible authority

- 5.6 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

Crime & disorder

- 5.7 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

Transfers of premises licences

- 5.8 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police in all cases, and the Home Office (Immigration Enforcement) if the licence authorises the sale of alcohol or provision of late night refreshment. Where it is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police and the Home Office (Immigration Enforcement) no later than the first working day after the application is given. However, the responsibility to notify the DPS remains with the applicant. Otherwise the general guidance on electronic applications set out in paragraphs 8.21 to 8.28 applies.
- 5.9 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police or the Home Office (Immigration Enforcement) raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.
- 5.10 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The

Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.

- 5.11 Such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police or the Home Office (Immigration Enforcement) are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that it would raise the matter immediately with the chief officer of police or the Home Office (Immigration Enforcement).

Hearings

- 5.12 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

- 5.13 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives;
- The representations (including supporting information) presented by all the parties;
- This Guidance;
- Its own statement of licensing policy.

Determining actions that are appropriate for the promotion of the licensing objectives

- 5.14 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

- 5.15 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

- 5.16 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is

imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

6. Licensing Comments

- 6.1 The sub-committee is under a statutory duty to determine this application with a view to promoting the licensing objectives. The guidance identifies immigration related offences as being relevant to the “prevention of crime and disorder” objective. As such, the primary consideration for the sub-committee is to ensure that the crime and disorder objective is not adversely affected by the grant of this application to transfer the premises licence.
- 6.2 In August 2016, the premises licence for Indian Voojan, of which Mr Ali is the licence holder, was subject to a review following an application submitted by Gloucestershire Constabulary. The review application was submitted in response to illegal workers found on the premises by Home Office Immigration enforcement staff.
- 6.3 In relation to the premises review application, the sub-committee resolved to suspend the premises licence for Indian Voojan for four weeks from 16/09/2016 to 13/10/2016.
- 6.4 This application must be determined on its individual merits, and in doing so, the sub-committee must have regard to the statutory guidance, the council’s licensing policy statement and the representations received.
- 6.5 The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives which can include:
- Granting the application as requested;
 - Modifying the conditions attached to the licence; or
 - Refuse the application
- 6.6 If the sub-committee is minded to attach or modify conditions attached to the grant of this licence, the sub-committee must be mindful of the statutory guidance relating to the imposition of conditions as outlined below:

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- Must be appropriate for the promotion of the licensing objectives;
- Must be precise and enforceable;
- Must be unambiguous and clear in what they intend to achieve;
- Should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- Must be tailored to the individual type, location and characteristics of the premises and events concerned;
- Should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- Should not replicate offences set out in the 2003 Act or other legislation;
- Should be proportionate, justifiable and be capable of being met;

- Cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in a prescriptive format.

Background Papers**Service Records****Report Author**

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