

Cheltenham Borough Council

Licensing Sub Committee – 11 October 2023

Licensing Act 2003: Determination of Application for a Premises Licence Review

Koloshi Bar & Restaurant, London Road, Charlton Kings, Cheltenham

Report of the Licensing Team Leader

1. Introduction

- 1.1 An application for a review of the Premises Licence in relation to Koloshi Bar & Restaurant, London Road, Charlton Kings has been received from the Home Office's Immigration Enforcement Unit pursuant to section 51 of the Licensing Act 2003. Copies of the application and supporting evidence is attached at **Appendix 1**.
- 1.2 Consequently, a licensing hearing is required to consider the application to review the Premises Licence and for the sub-committee to decide what, if any, sanction is appropriate for the promotion of the licensing objectives.
- 1.3 A copy of the Premises Licence issued in relation to Koloshi Bar & Restaurant is attached at **Appendix 2**.
- 1.4 The review of a Premises Licence application was submitted on 11.08.2023. Members are to note that an application for a transfer of the premises licence was received on 25.08.2023 and processed in accordance with the statutory process. Members should understand the effect of the transfer application in light of the application for a Premises Licence review. Please refer to the officer's comments.

1.5 Implications

- 1.5.1 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. 23/01270/PRMR)

- 2.1 Licence Holder(s): Mr Shahidur Rahman
- 2.2 Applicant: Home Office's Immigration Enforcement Unit
- 2.3 Premises: Koloshi Bar & Restaurant, London Road, Charlton Kings, Cheltenham

3. Responsible Authorities

- 3.1 No representations were received from any Responsible Authorities.

4. Interested Parties

- 4.1 No representations were received from any other persons.

Koloshi Bar / Restaurant	Page 1 of 6	Last updated 02 October 2023
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5. Local Policy Considerations (Dec 2022)

- 5.1 The paragraphs below outline the relevant extracts from the authority's adopted Statement of Licensing Policy (Dec 2020). Member should refer to the full statement available on the authority's website for a full understanding of the local policy considerations.
- 5.2 Policy Vision Statement - We want Cheltenham to be a safe and clean town that offers a greater diversity in the night time economy that is less focused on alcohol and protects the quality of life for residents.
- 5.3 The main purpose of this policy is to provide clarity to applicants, responsible authorities, elected Members and other persons on how the authority will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and also to provide a basis for all licensing decisions taken by the authority.
- 5.4 The objective of this policy is to:
- promote the four licensing objectives;
 - ensure that the premises are appropriate for their proposed use;
 - ensure the premises layout and condition is acceptable for the proposed use;
 - ensure that the premises are being managed responsibly; and
 - promote the policy vision statement.
- 5.5 This policy also seeks to promote the authority's wider priorities, in particular that:
- Cheltenham has a clean and well-maintained environment;
 - Cheltenham has a strong and sustainable economy;
 - Communities feel safe and are safe;
 - People are able to lead healthy lifestyles; and
 - Our residents enjoy a strong sense of community and are involved in resolving local issues.

Licensing Objectives

- 5.6 The authority will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children
- 5.7 In determining a licensing application, the overriding principle adopted by the authority will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed.
- 5.8 The authority will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure.
- 5.9 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity.

6. National Guidance

- 6.1 Guidance has been issued under Section 182 of The Licensing Act 2003. Below are relevant extracts from the statutory guidance (August 2023, Emphasis Added). Members must however ensure they have a thorough understanding of the relevant parts of the statutory guidance.

The licensing objectives - Crime and disorder

- 6.2 *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 evidence of a right to work check, either physical or digital (e.g. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises.

Home Office Immigration Enforcement acting as a responsible authority

- 6.3 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.

Section 11 – Reviews

- 6.4 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.
- 6.5 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives.
- 6.6 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.
- 6.7 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.
- 6.8 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)¹⁰;

Koloshi Bar / Restaurant	Page 3 of 6	Last updated 02 October 2023
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- 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.

6.9 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.

6.10 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.*

6.11 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

6.12 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.

6.13 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.*

6.14 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 employing a person who is disqualified from that work by reason of their immigration status in the UK;

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6.15 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

7. Licensing Comments

7.1 The committee must determine this application and take whatever steps it considers necessary for the promotion of any of the licensing objectives. These are:

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

7.2 The steps are:

- a) to modify the conditions of the licence;
- b) to exclude a licensable activity from the scope of the licence;
- c) to remove the designated premises supervisor;
- d) to suspend the licence for a period not exceeding three months; and/or
- e) to revoke the licence.

7.3 The statutory guidance makes clear that illegal working and immigration offences should be considered particularly serious by the sub-committee (6.14). The statutory guidance goes on to say that “Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. (6.15)”

7.4 In connection with the above, the statutory guidance also points out that “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. (6.13)”

7.5 The above is relevant to the subsequent premises transfer application received as referred to in 1.4 above. The new licence holder is not the licence holder at the time of the alleged immigration offences. Members may wish to understand the motivation for the transfer application and the relationship between the existing licence holder Mr Muhammad Azad Hussain (previous licence holder at the time of the alleged offences) in order to understand whether the transfer application will have any material impact on the operation of the premises and the need to promote the licensing objectives. The fact that the premises licence has been transfer does not remove any powers from the sub-committee to take whatever steps it considers necessary for the promotion of any of the licensing objectives.

- 7.6 The Designated Premises Supervisor has not changed as a result of the transfer application.
- 7.7 However, Members must determine the application on its merits and based on the information available to the committee at the time of the hearing. At the time of writing this report, officers have not been able to establish whether civil penalties have been imposed and whether these have been paid or appealed. Notwithstanding however, the statutory guidance points out that there is *no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings*. It is therefore within the committee’s discretion therefore to proceed with a determination of the review pending the outcome of any criminal proceedings yet to follow.
- 7.8 In considering the appropriate steps, Members are to note that it “... may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.”

Background Papers

Service Records

Report Author

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