

Report for: Special Licensing Sub Committee - 14th April 2021

Title: HEARING TO CONSIDER AN APPLICATION FOR REVIEW AGAINST
A PREMISES LICENCE - RAKKAS 363-365 Green Lanes, London
N8

**Report
authorised by :** Regulatory Services Manager

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Ward(s) affected: Green Lanes

**Report for Key/
Non Key Decision:** Not applicable

1. Describe the issue under consideration

1.1 This report relates to an application for the Review of Rakkas' Premises License brought by The Environmental Health RA under the prevention of crime and disorder, and Public safety licensing objectives.

1.2 Summary of review received:

i) The operation of the premises has failed to uphold and promote the prevention of crime and disorder and the public safety objectives by choosing to defy the Covid Regulations in place and opening up to operate providing food , alcohol and shisha pipes at a time when the country was placed into Lockdown and hospitality businesses were effectively closed, save for the provision of takeaway food

1.3 The full review application and supporting documentary evidence can be found at **Appendix A.**

i) A copy of the current Premises Licence is at **Appendix B.**

ii) Copies of Representations in support of the review are at **Appendix C**

1.4 Representations must relate to particular premises for which a Premises Licence is already held and must be relevant to the promotion of the Licensing Objectives. The Licensing Committee, in determining a review, may exercise the range of powers given to them to promote the Licensing Objectives. The Authority will seek to establish the cause or causes of the concern and remedial action will be targeted at such causes. Any action will be proportionate to the problems involved. 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 the revocation of the licence- even in the first instance - will be seriously considered (Amended Guidance, paragraph 11.27). Revocation also remains an option if other licensing objectives are being undermined.

2 Recommendations

Powers of a Licensing Authority on the Determination of a Review are

- a) To modify the conditions of the licence, (which includes adding new conditions or any alteration or omission of an existing condition) for example reducing the hours of opening, or by requiring doors supervisors;
- b) To 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);
- c) To remove the designated premises supervisor, for example because they consider that the problems are as a result of poor management;
- d) To suspend the licence for a period not exceeding three months;
- e) To revoke the licence.

Members of the Licensing Sub – Committee are reminded of their duty under the Section 17 of the Crime and Disorder Act 1989 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to cooperate in the reduction of crime and disorder in the Borough.

3. Background

- 3.1 The premises has operated predominantly as a shisha lounge with a restaurant and the ability to sell alcohol since Mr Ozbeck took over the licence in January 2014. The premises licence was then varied by Mr Ozbek in April 2014 to extend the opening hours for the rear area. The licence was subject to a review process in 2016 brought by Haringey Noise Team. Mr Ozbeck received a number of warnings to take steps to prevent noise nuisance which was impacting quite severely on the residential properties above. The late hours of the rear area and enlarged shisha smoking area had led to music being provided in this area to customers. Between 2014 and 2019 the Council dealt with 89 noise nuisance complaints relating to the premises.
- 3.2 Since March 2020, Government restrictions on the hospitality trade imposed by Regulations, and operating measures recommended in guidance, have been altered on several occasions in response to the health challenges facing the UK during the COVID-19 pandemic. A summary of the impact from Covid on residents of Haringey in December 2020 and February 2021 is attached at Appendix D.
- 3.3 A breach of the Regulations is a criminal offence and so engages, among other Licensing objectives the prevention of crime and disorder licensing objective. Regardless of the specific terms of COVID-related regulations (and whether or not there is a criminal breach), all licensed operators are subject to a more general legal duty under the Health and Safety at Work Act 1974 to protect the health, safety and welfare of their employees, and other people who might be affected by their business. This includes staff, customers and the wider community. Operators must do whatever is reasonably practicable to achieve this aim.
On 3 July 2020, in time for the re-opening of most hospitality premises the following day ("Independence Day"), the Government published important updated and widely Circulated COVID-secure guidance for restaurants, pubs, bars and takeaways: "Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services".
- 3.4 London was placed in Tier 2 restrictions when the premises Rakkas was first found to be operating in breach of the rules. The All Tier regulations took effect on 2nd December

2020. It placed restrictions on businesses to limit their interaction with the public to help slow the spread the spread of the virus. Hospitality venues such as

- Pubs and bars must close, unless operating as restaurants
- Businesses selling food/drink for consumption on their premises must provide table service only, and close at 11pm with last orders at 10pm
- Hospitality selling food and drink for consumption off the premises can continue to do so after 10pm as long as this is through delivery service, click and collect or drive through

There were 'Restricted businesses and services for the purpose of the legislations namely, nightclubs, sexual entertainment venues and business which provides, whether for payment or otherwise—

- (i) a waterpipe to be used for the consumption of tobacco or any other substance on the premises, or
- (ii) a device to be used for the recreational inhalation of nicotine or any other substance on the premises.

3.5 Officers attendd the venue on 5th December and found that shsisha pipes were being made available for use to customers on site in breach of the regulations. A Prohibition Notice was subbssequently issued to Mr Ozbeck requiring him to stop the use of the water pipes.

3.6 The second breach came about on 2nd Februray 2021 when police attended the venue following reports of people entering the premises to eat and rink throughout the evening. Officers found evidence of the public onsite. Shisha activity was taking place and the premises had catered for a number of customers who were given access via the back door. The Committee is reminded that the UK was placed in a National Lockdown at this time and all hospitality was required to close unless able to offer take away food. Takeway alcohol was not permitted. The use or offer of smoking with waterpipes was prohibited.

3.7 As a result of this further breach a fixed penalty notice was issued against Mr Ozbeck and a further FPN was issued for breach the Prohibition Notice that had been served in December by now allowing for waterpipes to be used in breach of the regulations. In the case of this premises, the Environmental Health officer submit that both the objectives, whether directly or indirectly, are engaged because:

- a. Breaches of the COVID regulations are criminal offences.
- b. A person acting in a way that increases the risk of spreading an infection such as COVID-19 among the public, is likely to have committed the serious criminal common-law offence of "causing a public nuisance" (which carries a maximum sentence of life imprisonment).

3.8 This engages both the crime and disorder and nuisance objectives. In the leading modern case of R v Rimmington & Goldstein [2005] UKHL the House of Lords approved this definition of the offence (emphasis added):

"A person is guilty of a public nuisance who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to **endanger the life, health, property... or comfort of the public... .**"

3.9 The EHO suggest that the public safety objective is also engaged. Although Public safety is not considered with public health in general, it is concerned with the safety of people of using the venue. The police suggest that the safety of a person using this venue is impacted if they were to immediately contract a potentially fatal respiratory illness whilst on the premises. In relation to the public

safety objective, the s.182 Guidance states at s2.7:

“Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

4. Licensing Policy

4.1 In carrying out their licensing functions a licensing authority must have regard to the licensing authority’s Statement of Licensing Policy and the Secretary of State’s Guidance issued under Section 182 of the Licensing Act 2003 (“s.182 Guidance”). In relation to “Reviews”, the s.182 Guidance recognises that:
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.

4.2 Similarly, the s.182 Guidance points out, in the context of reviews arising in connection with crime, that the duty of a licensing authority is to make decisions in the interests of the wider community and not simply those of the individual licence holder:

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.

4.3 Hearsay evidence is admissible although the High Court has observed that:
“Some evidence such as gossip, speculation and unsubstantiated innuendo Would be rightly disregarded. Other evidence, even if hearsay, might by its source, nature and inherent probability carry a greater degree of credibility. All would depend on the particular facts and circumstances.”

4.4 Given these are administrative/civil proceedings, where a factual issue falls to be decided the standard of proof is the balance of probabilities.
The promotion of the licensing objectives is ultimately a forward looking exercise. Deterrence is also a proper consideration. In *East Lindsey District Council v Abu Hanif*, (Admin), a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions:
“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was

appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.”

4.5 Similarly, in *R (Bassetlaw District Council) v Worksop Magistrates’ Court* [2008] EWHC 3530 (Admin), the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J (at §32), referred to deterrence as a proper consideration in the context of licence reviews. Responsible operators are expected to be compliant with the law.

4.6 The committee will also wish to be aware of the guidance issued under section 182 of the Licensing Act 2003:

4.7 Powers of a Licensing Authority

Powers of a Licensing Authority on the Determination of a Review s11.23
Licensing authorities should also note that modifications of conditions and 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. 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. 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.

4.8 The decision should be made with regard to the Secretary of the State’s guidance and the Council’s Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

5. Other considerations

5.1 Section 17 of the Crime and Disorder Act 1998 states:

“Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that is reasonably can to prevent crime and disorder in its area”.

5.2 Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property

- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

6 Use of Appendices

Appendix A- Review application form and supporting Documentation.

Appendix B – Copy of Premises licence.

Appendix C- Copy of representations in support of review

Appendix D- Summary of Covid impact in relevant months