

PREMISES/PERSONAL LICENCES SUB-COMMITTEE

30 MARCH 2020

REPORT OF ACTING CORPORATE DIRECTOR [OPERATIONS AND DELIVERY]

LICENSING ACT 2003

Members are respectfully reminded that, in determining the matters listed under item **A.1**, they are exercising an administrative function but should determine each matter adopting the civil burden of proof, i.e. 'on the balance of probabilities'. The matters will be determined on the facts before the Sub-Committee and the rules of natural justice will apply. Each application must be considered in its own right and on its own merits.

The Licensing Act 2003 established a single integrated scheme for licensing premises that are used for the supply of alcohol, regulated entertainment or provision of late night refreshment. This system of licensing incorporates the sale of alcohol both on and off licensed premises; public entertainment such as music, dancing, indoor sporting events, boxing or wrestling, theatres, cinemas; and late night refreshment houses and take-aways.

The purpose of the licensing system is to positively promote the four 'licensing objectives'.

These are:

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance
- Public Safety
- The Protection of Children from Harm.

Human Rights Implications

A Licence is to be regarded as the property of the applicant; however their right to the use of the property must be balanced against all other public interests or representations in this matter that the Premises/Personal Licences Sub-Committee may wish to consider as appropriate, reasonable and proportionate in relation to the Premises Licence Review application that has been submitted and also the representations that have been received in support of that application.

In making their decision in respect to this application to review a premises licence, Members of the Premises/Personal Licences Sub-Committee should also take into consideration Article 1 of the First Protocol of the Human Rights Act 1998, that individuals are entitled to the peaceful enjoyment of their property, and also Article 8 that everyone has the right to respect for his private and family life and his correspondence.

Crime and Disorder Implications

Section 17 of the Crime and Disorder Act 1998 imposes a duty on local authorities when exercising any of their functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all it possibly can to prevent, crime and disorder in its area.

Members are requested to consider the information shown below where the Licensing Authority has received an application to review a premises licence and also representations supporting that review relevant to one or more of the four Licensing Objectives, and which suggests that the premises may currently be having a negative impact on one or more of the Licensing Objectives.

**A.1 LICENSING ACT 2003 - APPLICATION FOR THE REVIEW OF PREMISES LICENCE
- GREAT GURKHA RESTAURANT, 126 OLD ROAD, CLACTON ON SEA, ESSEX
[Report prepared by Emma King]**

1.0 REASON FOR APPLICATION

Under Section 51 of the Licensing Act 2003 Essex Police, being a Responsible Authority, has applied for a Review of the above Premises Licence currently held by Aishwarya Enterprises Ltd.

2.0 DETAILS OF CURRENT LICENCE WHICH IS SUBJECT TO REVIEW

2.1 Premises

Great Gurkha Restaurant, 126 Old Road, Clacton on Sea, Essex

2.2 Licence No

19/00674/PREMTR

2.3 Premises Licence Holder

Aishwarya Enterprises Ltd

2.4 Designated Premises Supervisor

Miss Mithula Varatharasa

2.5 Current Licensable Activities

The current licensable activities permitted by the Premises Licence are:-

Sale of Alcohol on and off the premises

Monday to Thursday	12:00 - 23:30
Friday to Saturday	12:00 - 00:00
Sunday	12:00 - 23:30

Performance of Recorded Music

Monday to Thursday	12:00 - 23:30
Friday to Saturday	12:00 - 00:00
Sunday	12:00 - 23:30

Late Night Refreshment

Monday to Thursday	23:00 - 23:30
Friday to Saturday	23:00 - 00:00
Sunday	23:00 - 23:30

The opening hours of the premises

Monday to Thursday	12:00 - 00:00
Friday to Saturday	12:00 - 00:30
Sunday	12:00 - 00:00

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Supply of Alcohol both on and off the premises

A copy of the full Premises Licence is attached to this report as **APPENDIX 1**.

2.6 General Information

Aishwarya Enterprises Ltd have been the Premises Licence holder since the licence was transferred on 13 November 2019, and Miss Mithula Varatharasa has been the Designated Premises Supervisor (DPS) of the restaurant since 13 November 2019.

3.0 DETAILS OF APPLICATION FOR REVIEW

3.1 Application Details

An application for the Review of the Premises Licence for the Great Gurkha Restaurant has been submitted by Essex Police. This was received by the Licensing Authority on 06 February 2020 on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder has been breached; as the Premises Licence holder Aishwarya Enterprise Ltd and DPS Miss Mithula Varatharasa had been found by the East of England Immigration Enforcement team on 10 January 2020 to be employing persons who had no right to work or stay in the United Kingdom.

In summary, the Review application and its accompanying supporting documents advise and contain the following:

- Home Office guidance on right to work checks
- Home Officer Letter of support.
- A Section 9 witness statement from PC Southgate regarding police visit on 25 February 2019.
- A Section 9 witness statement from Licensing Officer Moody regarding immigration visit on 10 January 2020.
- A Section 9 witness statement from Immigration Officer Gear regarding immigration visit on 10 January 2020.
- A Section 9 witness statement from Licensing Officer Moody regarding a meeting with Mithula Varatharasa on 29 January 2020.
- Extracts from company registration application for Aishwarya Enterprises Ltd.

A copy of the Premises Licence Review application and all of the documents referred to in the bullet points above are attached to this report in full as a bundle and are attached as **APPENDIX 2**.

3.2 Notice of Display and Advertisement

Notice of the review application has been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. In particular, a notice detailing the review application was clearly displayed on the premises concerned and on the Tendring District Council Website for the prescribed 28 day period. Periodic checks were undertaken by the Licensing Authority to ensure that this was the case. The end of the notice period was 05 March 2020.

3.3 Validity of Application for Review

The Licensing Authority has accepted the review application and is satisfied that it has been properly served in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. The Head of Customer and Commercial Services is satisfied that the application and the representations that it makes are relevant to the licensing objectives and are not vexatious, repetitious or frivolous in nature.

3.4 Other Responsible Authorities

No representations have been received from any other Responsible Authorities.

3.5 Other Persons

Other persons can also make representations in regards to review applications. Other persons in terms of the Licensing Act 2003 can include any individual, body or business and in accordance with paragraph 8.13 of the Section 182 Guidance issued by the Secretary of State (April 2017 version) which accompanies the Licensing Act 2003, are entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence.

3.6 Such representations should be relevant and not be considered by the Licensing Authority as vexatious, repetitious or frivolous and can be made in opposition to, or support of, an application and can be made by any individual, body or business that has grounds to do so. The S182 Guidance is silent on whether representations can be made against an application for a review, or in support of the respondent to the review (which in this case is the Premises Licence holder Aishwarya Enterprises Ltd). However, given that the Guidance is silent on this question, but clearly indicates that other persons can make representations in regards to a review and that representations can be made in support of applications, it is therefore reasonable to assume that representations can also be made in support of the Premises Licence Holder Aishwarya Enterprises Ltd in this matter for due consideration by the Licensing Sub Committee and as part of the Review application hearing process.

4.0 LA 2003 SECTION 182 GUIDANCE WITH REGARD TO REVIEW HEARINGS (Version April 2017)

Sections 11.1 to 11.28 of the Guidance [issued by the Secretary of State under Section 182 of the Licensing Act 2003] assists all parties in respect to advice on review applications and hearings, including those arising in connection with crime and the relevant extracts of this guidance are attached to this report as **APPENDIX 3**.

5.0 TENDRING DISTRICT COUNCILS STATEMENT OF LICENSING POLICY

The relevant sections/extracts of the Council's Statement of Licensing Policy in respect to Review applications are as follows:

Reviews

1.41 Where possible and appropriate the Licensing Authority and all other Responsible Authorities will give early warning to licence holders of any concerns about problems identified at premises which may undermine, or are undermining, one or more of the licensing objectives and to initiate a dialogue that can lead to a resolution of these problems to the satisfaction of all parties. The review process represents a valuable protection mechanism for residents and the wider community to be able address problems with a specific premises where for instance there is alcohol related crime and disorder or public nuisance and where for example dialogue between the licence holder, responsible authorities or other parties concerned such as residents to prevent or mitigate such problems has not worked.

1.42 Responsible authorities or other persons (which could include a resident, business or Ward Councillor for example) can make an application to trigger a review of a premises licence but evidence of the problems being experienced would be required to be presented to the Licensing Authority and an applicant or applicants for a review would ordinarily be expected to be able to substantiate their complaints at a Licensing Sub Committee hearing. Representations must be relevant to one or more of the four licensing objectives and will not be accepted if they are determined by the Licensing Authority to be frivolous, vexatious or repetitious.

1.43 No more than one review application from interested parties other than a Responsible Authority will normally be permitted within any 12 month period on similar grounds except in exceptional and compelling circumstances.

6.0 APPEALS

An appeal against the decision of the Licensing Authority can be made by the following:

- (a) the Applicants
- (b) the holders of the Premises Licence
- (c) any person who made relevant representations in relation to the application

The appeal has to be made to the Magistrates' Court within a period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of its decision.

7.0 ASSOCIATED PAPERS

- (i) Copies of the following documents have been supplied to the Premises Licence holder:
 - (a) Review application from Essex Police and accompanying papers.
- (ii) In addition to the documents already attached as Appendices to this report, the following papers are also enclosed:-
 - (a) Location Plan of the premises
 - (b) Details of the Hearing Procedure

Copies of all documentation concerning this Application for Review are available from Licensing Team upon request.

8.0 OPTIONS UNDER SECTION 52 LICENSING ACT 2003

- 8.1 Following Members' consideration of this review application submitted by Essex Police, Section 52 of the Licensing Act 2003 states that Members of the Licensing Authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the Licensing Objectives.

These steps are:-

- (i) to modify the conditions of the licence
- (ii) to exclude a licensable activity from the scope of the licence
- (iii) to remove the Designated Premises Supervisor
- (iv) to suspend the licence for a period not exceeding three months
- (v) to revoke the licence

For this purpose, the conditions of the licence are modified if any of them are altered or omitted, or any new conditions are added as a result of this Review Hearing.

In addition to the above measures, Members are advised that it is also open to them that they may for example decide to take no action in respect of the review application, or issue an informal/formal warning letter and/or recommend improvement to the premises and its management within a particular period of time if they think that on consideration of the facts and balance of probabilities, this is a reasonable, proportionate and appropriate approach to take in regards to this Review application.

9.0 RECOMMENDATION/S

- 9.1 **No specific recommendation is made to the Licensing Sub Committee in respect to this Review application other than in accordance with Section 52 of the Licensing Act 2003 (as shown above). Members of the Licensing Sub Committee are asked to reasonably, proportionately and appropriately determine this application for a Review of a Premises Licence in respect of the premises and person named as the licence holder in its own right and on its own merits taking into account all matters detailed in in the agenda, report and accompanying papers and any other relevant matters that may be brought up at the hearing itself by any of the parties that have an interest in this Review hearing.**

**DAMIAN WILLIAMS
ACTING CORPORATE DIRECTOR
[OPERATIONS AND DELIVERY]**