

# Crawley Borough Council

## Report to Licensing Sub-Committee

12 February 2024

### Application for the Review of a Premises Licence: Mon Ami, 20 Broad Walk, Northgate, Crawley, RH10 1HQ

Report of the Head of Community Services – HCS/077

---

#### **1. Recommendations**

- 1.1 That the Sub-Committee considers the contents of this report and any oral or documentary evidence provided in connection with the hearing, and determines, with reasons, the application for review made by Kareen Plympton, Health, Safety and Licensing Manager for Crawley Borough Council as the Licensing Authority of the Premises Licence granted in respect of a premises known as Mon Ami, 20 Broad Walk, Northgate, Crawley, RH10 1HQ under the Licensing Act 2003 (the 'Act').

#### **2. Type of Hearing and Powers of the Sub-Committee**

- 2.1. Crawley Borough Council is the Licensing Authority for the borough of Crawley and determines all matters under the Licensing Act 2003. This includes where an application to review a premises licence is made.
- 2.2. The Sub-Committee is required to determine the application by taking such of the steps set out below (in paragraph 8.4) as it considers appropriate for the promotion of the Licensing Objectives under the Act.

#### **3. Reason for the Hearing – Review of Premises Licence**

- 3.1 At any stage following the grant of a premises licence, any person or Responsible Authority may request the Licensing Authority to review the premises licence because of matters arising at the site which raise concerns in connection with the failure to promote one or more of the Licensing Objectives as part of the Act.
- 3.2 On 22/12/23, Kareen Plympton, Health, Safety and Licensing Manager on behalf of the Licensing Authority as a Responsible Authority, submitted a review application in relation to the premises under Section 51 of the Act.
- 3.3 It now falls to the Sub-Committee to consider and determine the review application.

#### **4. Licensing Objectives**

- 4.1 The Licensing Sub-Committee must consider each application on its own merits, in accordance with the provisions within the 2003 Act, including the Licensing Objectives which are:
- The prevention of crime and disorder
  - The protection of children from harm
  - Public safety
  - The prevention of public nuisance.

4.2 The grounds for the review by the Council as the Licensing Authority are that the following Licensing Objectives were not being promoted.

- The prevention of crime and disorder –

The premises had repeatedly breached its premises licence conditions contrary to the Licensing Act 2003 and the (now former) Premises Licence Holder/Designated Premises Supervisor Mr Nezaj has both smoked in a smokefree premises and as the person in operational control, has permitted the smoking of shisha by others in an enclosed and/or substantially enclosed premises which is both a workplace and an area to which the public have access contrary to the Health Act 2006, and related Smokefree Regulations, including the Smokefree (Enforcement and Premises) Regulations 2006

- Public safety – as above.

- The protection of children from harm – children are permitted unrestricted access to the premises where licence conditions are being breached and smoking is taking place in a substantially enclosed premises.

4.3 The Licensing Authority formed this view because premises licence conditions attached to the premises licence as issued under the Act have been repeatedly breached and that those in operational control both participated and allowed the smoking of shisha in a substantially enclosed premises contrary to Smoke Free (Premises and Enforcement) Regulations 2006. Further, that despite repeated advice, guidance and warnings to those in operational control along with the then Premises Licence Holder and Designated Premises Supervisor, Ergon Nezaj, that the breaches of premises licence conditions and offences under smokefree legislation continued. This led to a loss of confidence by the Licensing Authority in the management to operate the premises in accordance with various regulatory regimes, and that the Licensing Objectives were not being promoted.

4.4 By way of background, on 08/09/23, Ergon Nezaj applied to be issued a premises licence under the Act and sought to be specified as the Designated Premises Supervisor (DPS) and Premises Licence Holder.

4.5 The application specified the proposed trading hours as 07:00 hours until 23:00 hours on Sunday through to Wednesday, and 07:00 hours to 01:00 hours on Thursday through to Saturday. The application also sought to authorise the licensable activity “Supply of Alcohol” 11:00 hours - 22:30 hours Sunday to Wednesday, and between 11:00 hours to 00:30 hours the following day Thursday to Saturday, and to authorise the licensable activity “Late night refreshment” (hot food) between 23:00 hours and 01:00 hours, Thursday to Saturday.

4.6 Following representations by Sussex Police as a Responsible Authority on 27/09/23, agreement was reached via the owner’s Licensing Consultant that a series of further conditions be added to the licence, limiting the sale of alcohol to persons seated at tables partaking in a table meal.

4.7 Sub-Committee members will have already considered the variation to the premises licence application separately in a separate, earlier hearing. The hearing in relation to the variation was delayed in the public interest and to ensure effective use of public resources and funds to allow it to be considered consecutively as there are many synergies.

4.8 The review application is available to view on the Council’s website [here](#) (this document refers to further appendices A to M, which can be found within this agenda

under item 4, *Application to Vary the Premises Licence for Mon Ami, 20 Broad Walk, Northgate, Crawley, RH10 1HQ*). It highlights the repeated attempts by the Council's Licensing Team to engage, warn and educate those responsible for the premises to secure compliance and actions taken by them as well as other Regulatory Officers.

## **5. Additional Information & Consecutive Sub-Committee Hearing**

- 5.1 On 29/11/23, an application to vary the premises licence was made in the name of the then premises licence holder and DPS, Ergon Nezap. In summary, the variation application sought to remove conditions requiring that the consumption of alcohol would only be permitted when taking a table meal/substantial refreshment. The variation sought to remove the requirement for food in relation to all alcohol sales and that the premises would seek to operate as a "café bar" type premises whereby alcohol could be purchased without the need for food, but that there would be no vertical drinking.
- 5.2 Given the matters outlined in the application to review the premises licence had not been resolved when the application to vary the premises licence was made, Kareen Plympton, Health, Safety and Licensing Manager, lodged a representation on behalf of the Licensing Authority as Responsible Authority on 22/12/23 on the same grounds as outlined in application to review the premises licence.
- 5.3 Both the application to vary and then seek a review of the premises licence have been listed to be heard consecutively as a means to make best use of public funds and to ensure a better understanding of the matters at hand as this is a complex case.

## **6. Consultation and Relevant Representations**

- 6.1 Following receipt of the review application by the Council's Licensing Team, a statutory 28-day consultation period began, during which representations in respect of the review application could be submitted to the Licensing Authority. The representation period concluded on 19<sup>th</sup> January 2024.
- 6.2 As required by the Act, the application was properly advertised both on the premises and at Crawley Town Hall, both on the Council's website and in the public facing windows of the Town Hall, Crawley. Copies of the application were also circulated to all Responsible Authorities under the Act. Hard copies of the application and site notices were also served on the premises by Warren Jones, Senior Licensing Officer, along with instructions on how and where to place the notices advertising the application for review of the premises licence so that the notice could be seen by the public at all times throughout the 28-day consultation process.
- 6.3 During the 28-day consultation process, on 02/01/24, a relevant representation was received from the Public Health Body, West Sussex County Council, in their capacity as a Responsible Authority under the following Licensing Objectives:
  - The protection of children from harm
  - Public safety.
- 6.4 A full version of their representation is included at **Appendix A**.

## **7. Discussions With All Parties Making Representations**

- 7.1 As a result of the representation by the Council as Licensing Authority in relation to both the application to vary the premises licence and application to review the premises licence, Noel Samaroo, Licensing Consultant and Kareen Plympton,

Health, Safety and Licensing Manager had ongoing discussions regarding both the application to vary the premises licence and review application.

- 7.2 On 28/12/23, Lutfi Neza, premises owner contacted Kareen Plympton, Health, Safety and Licensing Manager to try to seek a resolution of matters in relation to both the variation and review of the premises licence, His email stated:

*“Dear Kareen and Warren,*

*I am writing to you regarding Mon Ami Lounge.*

*I have applied for a Full Variation to change / amend some of the restrictions on the Operating Schedule of the current license.*

*I am writing to confirm that I am happy to work with you. I am fully aware of your issue regarding the Shish aspect of the business. For this, I am happy to stop Shisha activities on the premises for the time being.*

*I have invested a lot of time, money and effort into the property in a bid to boom the night time economy of Crawley. I have also given employment to others.*

*This is an extremely busy time for the hospitality sector and I really need my doors to be open so that I have a chance to trade at this crucial time.*

*I would be grateful if you could please accept the current application and as I stressed above, I am happy to remove all Shisha aspects from the business until we can reach a resolution.*

*I would be grateful if we could stop the license review and I will operate the business without Shisha. I would be grateful if you could provide me with a speedy response.*

*Kind regards,  
Lutfi Neza”*

- 7.3 This led to a meeting on 10/01/24 attended by Noel Samaroo, Kareen Plympton and Senior Licensing Officer, Warren Jones. Mr Lutfi Neza also attended the meeting but was unable to participate as he was not specified on the premises licence, nor had he lodged a notification of interest.
- 7.4 The purpose of the meeting was to discuss the representations made to see if any matters could be resolved. Shortly before this date, on or around 09/01/24, Mr Lutfi Neza contacted Kareen Plympton to advise that he had closed the business as he could not meet the requirements of the current premises licence and confirmed that it would remain closed until the licensing situation had been resolved. This was confirmed by Mr Samaroo at the meeting on 10/01/24.
- 7.5 In addition to those conditions agreed with Sussex Police in relation to the application to vary the premises licence, a series of other conditions and changes to staff were discussed to address the representation and concerns of the Licensing Authority. It was agreed by the Council and the licence holder that any common ground, condition proposals and operational changes could be formalised by way of a Memorandum of Agreement.
- 7.6 Prior to the conclusion of discussions, and as a consequence of the discussions to try and regain the Licensing Authority’s trust and confidence in management, changes were made to the licence to remove the then DPS and Premises Licence Holder, Mr Ergon Nezaj and replace him with the business owner, Mr Lutfi Neza as

the person who will be in day-to-day operation at the premises. This change took effect from 27/01/24.

- 7.7 Further assurances about staff training and a commitment to working in partnership with the Licensing Authority were agreed in principle and have been included in a Memorandum of Agreement for consideration by the Licensing Sub-Committee in relation to the review.
- 7.8 The Memorandum of Agreement contains the outcomes of the discussions including licence conditions proposed to be added to the licence, and other matters requiring a change in premises licence holder and DPS to Mr Lutfi Neza retraining of staff on all matters under the Licensing Act 2003 and entire removal of all shisha products and related paraphernalia from the premises. A signed copy of the Memorandum of Agreement, dated 01/02/24, is included at **Appendix B**.
- 7.9 The Public Health Body as a Responsible Authority have indicated that it supports the Memorandum of Agreement and invites the Licensing Sub-Committee to agree subject to the conditions specified within it being attached to the premises licence, stating that these measures address the matters raised in their representation.

## **8. Relevant Considerations & Determination**

- 8.1 In the case of a review of a premises licence, there is no provision within the Act to dispense with a Licensing Sub-Committee. However, Sub-Committee members are invited to have regard to the Memorandum of Agreement that has been signed by Mr Lutfi Neza, the newly appointed Premises Licence Holder and Designated Premises Supervisor, Mr Samaroo, and Kareen Plympton on behalf of the Licensing Authority, which sets out the premises licence conditions and measures proposed to be put in place to address the representations made.
- 8.2 In reaching its determination, the Sub-Committee must consider the case on its merits and carry out its role with a view to promoting the four Licensing Objectives. The Sub-Committee must also have regard to Council's Statement of Licensing Policy (particularly Section 5), the current Section 182 Guidance (August 2023) Revised Guidance issued under section 182 of the Licensing Act 2003 (December 2023) along with the written and/or oral evidence presented during the hearing.
- 8.3 Relevant extracts from the Section 182 Guidance under the Act in relation to review proceedings at Section 11 are set out below:
- 11.5 The relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons.*
- 11.7 Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as relevant unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate*
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives*

*should be encouraged and reviews should not be used to undermine this co-operation.*

- 11.16 *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.*
- 11.17 *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.*
- 11.18 *However, 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....*
- 11.19 *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)<sup>10</sup>; • 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.*
- 11.20 *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.*
- 11.21 *For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.*
- 11.22 *Equally, it may emerge that poor management is a direct reflection of poor company practice or policy, and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.*
- 11.23 *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.*

8.4 The Licensing Authority must, having had regard to the review application and any relevant representations received by all parties, take such steps (if any) as it considers appropriate for the promotion of the Licensing Objectives:

- Modify the conditions of the Premises Licence (that is, adding new conditions or any alteration to or omission of existing conditions);
- Exclude a licensable activity from the scope of the licence;
- Remove the Designated Premises Supervisor;
- Suspend the licence for a period not exceeding three months;
- Revoke the licence.

8.5 The Licensing Authority may also choose not to take any action or may issue an informal warning.

8.6 The Sub-Committee must give reasons for any decision it takes.

## **9. Right of Appeal**

9.1 Under Section 181 and Schedule 5 of the Act, right of appeal to the Magistrates' Court in respect of application for review of an existing licence include:

- The applicant
- The licence holder
- Any person who made relevant representations.

## **10. Hearing Papers and Process**

10.1 The Hearing Notice and Committee Procedure for determination by the Sub-Committee have been sent to all parties in relation to the hearing under Regulation 7(2) and Schedule 3 of the Licensing Act 2003 (Hearings) Regulations 2005.

## **11. Implications**

11.1 There are no extra staffing or financial implications to the Council, save for those in respect of possible appeal(s) against any decision taken. The Licensing Service is a self-financing service, funded via fees and charges set by statute.

11.2 The Council is required to consider the impact any decision may have on crime and disorder in the area (Section 17, Crime and Disorder Act 1998) which states as follows:

*“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 functions on, and the need to do all that it reasonably can to prevent:*

*(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and*

*(b) the misuse of drugs, alcohol and other substances in its area; and re-offending in its area”*

11.3 Human Rights considerations must be taken into account in balancing licensing issues, in particular, article 1 of the first protocol and articles 6 and 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property (holding a licence would be considered a possession). Article 8 relates to the right to respect for private and family life, home and correspondence. Article 6 relates to the right to a fair trial. These are however qualified rights and can be deprived of “in the public interest”. Interference is permissible if what is done:

- Has its basis in law;
- Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
- Is proportionate to the aims being pursued; and
- Is related to the prevention of crime or the protection of public order or health or the protection of the rights and freedoms of others.

11.4 The Sub-Committee must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.

11.5 All applications before the Sub-Committee must be considered against the backdrop of anti-discriminatory legislation including the Equality Act 2010 and in accordance with the Council's current Equality Strategy.

## **Background Papers**

- Licensing Act 2003 (as amended)
- Home Office Guidance issued under Section 182 of the Licensing Act 2003 (August 2023)
- Crawley Borough Council's Statement of Licensing Policy.

Contact Officer:

Dan Carberry, Public Protection Manager

[dan.carberry@Crawley.gov.uk](mailto:dan.carberry@ Crawley.gov.uk)

01293 438000