

Crawley Borough Council

Report to Licensing Sub-Committee Wednesday 07th November 2018

Application to Review the premises licence applicable to the

MOONRAKER 199 Three Bridges Road Three Bridges Crawley

Report of the Head of Community Services –HCS/09

1. Purpose

- 1.1 On the 20th September 2018, Sussex Police as a 'responsible authority' submitted an application to the Council as the Licensing Authority for the Borough of Crawley for a REVIEW of the above mentioned premises licence. **Appendix A**
Copy of the Review Application
- 1.2 Sussex Police has requested a review on the grounds that the licence holder is not promoting the statutory licensing objective(s) of:- (I) Prevention of Crime and Disorder
(II) Public Safety s.51
Licensing Act 2003
(LA03)
- 1.3 It is contended the above mentioned licensing objectives have been seriously undermined by the failure of Martin Radmall, the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS), following a particularly serious assault upon a patron which went unreported, also that he failed to adhere to the conditions attached to the premises licence and to appropriately deal with the management of the premises.
- 1.4 On Weds 24th October 2018 Sussex Police submitted an additional evidential bundle. **Appendix B**
Additional Bundle

2. Recommendations

- 2.1 The Sub-Committee must, having regard to the application and any relevant representations take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.
- 2.2 The steps are: S 52(4) of the
Licensing Act 2003
- (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

and for this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

3. Reasons for the Recommendations

- 3.1 Section 51 of the Act states where a premises licence has effect, a responsible authority or any other person may apply to the relevant licensing authority for a review of the premises licence provided that the grounds for the review are relevant to one or more of the 'licensing objectives' and are not frivolous, vexatious or repetitious. The Act provides that the Council must take certain steps, which are those specified above in paragraph 2.2. Section 51(1), LA03

4. Background

- 4.1 Crawley Borough Council ("the Council") is the relevant licensing authority in relation to any premises within the Borough of Crawley which is to be used for one or more licensable/qualifying activities in accordance with the Licensing Act 2003 "the Act".
- 4.2 The MOONRAKER is a licensed premises subject to the stated terms and conditions under the Act with Martin Stephen Radmall named as both premises licence holder and designated premises supervisor (DPS). Appendix C
Copy of the
premises licence
- 4.3 Government guidance states that the proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence. S182 Guidance
Para 11.1 (Edition:
April 2018)

5. Details of the Review Application

- 5.1 Sussex Police state that they have deliberated upon the most appropriate resolution to the alleged failings of Mr Radmall the DPS of this premises, and initially it was felt that it would be proportionate to request revocation of the premises licence given that he is also the PLH. However, Sussex Police contend that a number of measures could be put in place which it is believed would promote the licensing objectives, ultimately allowing Ei Group Plc who own the building and have leased it to Mr Radmall, the opportunity to implement appropriate changes to protect members of the public from harm and to ensure the licensed premises can be run safely and to the benefit, rather than to the detriment, of the local community. The proposed measures are as follows in 5.1.1. to 5.1.11 and the text in *italics* are

the reasons given by Sussex Police as to why they have proposed them.

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| 5.1.1 | A new Designated Premises Supervisor shall be appointed who currently has no involvement with the licenced premises nor with the premises licence holder | Appendix A
Copy of the Review Application |
| 5.1.2 | The current DPS (Mr Radmall) shall not be permitted on the premises at any time licensable activity is taking place.

<i>Sussex Police consider these (2.1.1& 2.1.2) necessary to ensure that a new strong personal licence holder is able to take control and run the premises in accordance with the licence and the Licensing Act 2003.</i> | Appendix A
Copy of the Review Application |
| 5.1.3 | The DPS or a Personal Licence Holder will be on the premises, in a working capacity, each day until all members of the public have left the premises and its curtilage.

<i>Sussex police consider this appropriate to reduce the levels of drunkenness at the premises and support staff in providing a duty of care to patrons.</i> | Appendix A
Copy of the Review Application |
| 5.1.4 | Suspension of the licensable activities at the premises, for a period of not less than eight weeks

<i>Sussex police consider a suspension of this length is appropriate acting as a deterrent to management of this premises and other premises in the area. They assert that this will also demonstrate that the Local Authority will not tolerate this level of mismanagement. The period of suspension will send a clear message to those patrons who attend the premises, that the behaviour previously allowed will no longer be tolerated. This period of suspension will also allow time for the appointment of a new DPS and the reorganisation and/or retraining of the management and staff at the premises.</i> | Appendix A
Copy of the Review Application |
| 5.1.5 | The pool tables shall be removed from the premises

<i>To remove the focal point of many of the problems arising at the premises.</i> | Appendix A
Copy of the Review Application |
| 5.1.6 | Duty of Care policy which shall be included in staff training for all members of bar staff (and where relevant SIA door staff)

<i>Sussex police consider this appropriate to reduce the levels of drunkenness at the premises and support staff in providing a duty of care to patrons.</i> | Appendix A
Copy of the Review Application |
| 5.1.7 | Signage stating that the premises has a zero tolerance towards drugs. | Appendix A
Copy of the Review Application |
| 5.1.8 | Drugs policy which shall be included in staff training for all members of bar staff (and where relevant SIA door staff). | |
| 5.1.9 | Toilet checks to be completed at regular and frequent intervals. (a minimum of every 2 hours Monday-Thursday but increased to hourly checks on Friday and Saturdays)

<i>To promote the prevention of Crime & Disorder.</i> | Appendix A
Copy of the Review Application |
| 5.1.10 | A documented risk assessment must be written which identifies the activities undertaken at the premises and the controls necessary to promote the licensing objectives. On occasions when a requirement | Appendix A
Copy of the Review Application |

is identified by the licence holder's risk assessment or requested by Sussex Police, SIA trained and licensed door supervisors shall be employed and polycarbonate drinking vessels will be used both externally and internally. It will include written emendations demonstrating what considerations have been made for any additional special events which may arise during the year. This document shall be immediately available for inspection by the Police and the Licensing Authority, upon request.

To promote the prevention of Crime & Disorder.

- 5.1.11 A written record of those authorised to make sales of alcohol shall be kept. This shall be endorsed by the DPS with the date such authorisation commences. This shall be made available immediately upon request to the Local Authority Licensing Officers and Sussex Police Licensing Officers

Appendix A
Copy of the
Review Application

Sussex police consider this appropriate to further monitor sales of alcohol & reduce the levels of drunkenness and anti-social and behaviour at the premises.

6. Information & Analysis Supporting Recommendation

6.1 Relevant Representations

- 6.1.1 The application was advertised in accordance with legislation which resulted in the following relevant representations being submitted (7.1.2 and 7.1.3). The Sub-Committee must have regard to these when deciding what steps to take in respect of the review application.

- 6.1.2 GOSSCHALKS – On behalf of their client Ei Group Plc
Copy attached as appendix D

Appendix D

- 6.1.3 WSCC – Director of Public Health
Copy attached as appendix E.

Appendix E

6.2 Statutory Guidance (s182)

- 6.2.1 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

S182 Guidance
Para 11.2

- 6.2.2 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence 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.

S182 Guidance
Para 11.10

6.2.3	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.	S182 Guidance Para 11.16
6.2.4	The licensing authority may decide that the review does not require it to take any further steps appropriate to promote 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.	S182 Guidance Para 11.17
6.2.5	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.	S182 Guidance Para 11.18
6.2.6	Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:	Section 52 of the Licensing Act
	<ul style="list-style-type: none"> (a) 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; (b) to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music (where it is not within the incidental live music exemption); (c) to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management; (d) to suspend the licence for a period not exceeding three months; (e) to revoke the licence. 	S182 Guidance Para 11.19
6.2.7	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 cause(s) of concern that instigated the review.	S182 Guidance Para 11.20
6.2.8	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.	S.182 Guidance Para 11.21
6.2.9	Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the	S.182 Guidance Para 11.22

designated premises supervisor maybe an inadequate response to the problems presented.

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| 6.2.10 | 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. 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 and, where other measures are deemed insufficient, to revoke the licence. | S.182 Guidance
Para 11.23 |
| 6.3 Policy Considerations | | |
| 6.3.1 | Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. Some of the relevant sections are summarised below. | |
| 6.3.2 | The aim of the policy is to promote the licensing objectives set out in the Act whilst securing the safety and amenity of residential communities and facilitating a sustainable entertainment and cultural industry. | CBC Alcohol
Licensing Policy
1.2 |
| 6.3.3 | The Council recognises both the needs of residents for a safe and healthy environment in which to live and work and the importance of safe and well run premises providing entertainment to the local economy and vibrancy of the borough. | CBC Alcohol
Licensing Policy
1.7 |
| 6.3.4 | The Council recognises that licensing is about control of licensed premises, qualifying clubs and temporary events, within the terms of the Act. The terms and conditions attached to various permissions will be focused on matters which are within the reasonable control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places. | CBC Alcohol
Licensing Policy
2.4 |
| 6.3.5 | The Policy states that the Council will primarily focus on the direct impact the activities taking place at licensed premises may have on members of the public living, working or engaged in normal activity in the area concerned. Licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the reasonable control of the individual, club or business holding a licence, certificate or relevant permission. | CBC Alcohol
Licensing Policy
2.5 |

6.3.6	The policy states the key controls in respect of preventing crime and disorder arise from good operational planning and good management of activities at the premises.	CBC Alcohol Licensing Policy 2.10
6.3.7	The essential purpose of the licence is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. The Council will not, therefore, seek to use, conditions attached to licenses to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents.	CBC Alcohol Licensing Policy 2.11
6.3.8	The Policy states that no conditions relating to the management competency of designated premises supervisors will be attached to premises licences, unless it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and/or disorder and public safety.	CBC Alcohol Licensing Policy 2.12
6.3.9	The Policy states that conditions will be used if they can control issues that directly impact on the behaviour of those under the licensee's direction, when on the premises or in the immediate vicinity of the premises as they seek entry or leave.	CBC Alcohol Licensing Policy 2.14
6.3.10	The Policy states that it will look to the Police as the main source of advice on matters relating to the reduction of crime and disorder objective and this advice will be given considerable weight.	CBC Alcohol Licensing Policy 2.14
6.3.11	The Council will ensure that representations made by the statutory bodies and the police in respect of individual applications should be given considerable weight.	CBC Alcohol Licensing Policy 2.49
6.3.12	Once a premises licence is issued, it remains in place for the life of the business: there is no "annual renewal" of the licence, but applications are required to pay an annual fee to cover the Council's costs concerning the exercise of its statutory obligations under the Act as set out in the statute. However, should problems arise, it is possible for representations to be made to the Council, to review the licence.	CBC Alcohol Licensing Policy 7.1
6.3.13	The Policy states that the Council intends to use the review procedures effectively to deter crime. Where reviews arise and the Council determines that the crime prevention objective is being undermined through the premises being used to further crimes, we will seriously consider that revocation of the licence/certificate, even in the first instance.	CBC Alcohol Licensing Policy 7.6
6.3.14	The only conditions which should be imposed on a premises licence or club premises certificate are those which are appropriate and proportionate for the promotion of the licensing objectives. Accordingly, if other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club.	CBC Alcohol Licensing Policy 8.2

7. Implications

- 7.1 There are no extra staffing or financial implications to the Council, save for those in respect of possible appeal(s).
- 7.2 The Council is required to consider the impact any decision may have on an individual's Human Rights.
- 7.3 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:
- (1) 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
 - (c) re-offending in its area.

8. Background Papers

- Premises licence
- Sussex Police Review Application
- Letter of representation from Ei Group
- Letter of representation from WSCC Director of Public Health
- Copy of the s182 Guidance (April 2018)
- Current Statement of Licensing Policy

Report author and contact officer: *Mike Lyons, Senior Licensing Officer*
01293 438698
mike.lyons@crawley.gov.uk