Title: Licensing Act 2003 Premises Licence Review: Variety Food & Wine, 53 Ripple Road, Barking, IG11 7NT

Report of the Chief Operating Officer

Open Report For Decision

Wards Affected: Abbey Key Decision: No

Report Author: Richard Parkins, Senior Licensing Officer Contact Details:
Tel: 020 8227 5046
E-mail: richard.parkins@lbbd.gov.uk

Accountable Director: Jonathon Toy, Operational Director, Enforcement Services

Accountable Strategic Director: Claire Symonds, Chief Operating Officer

Summary

An application has been received from the Council’s Trading Standards Service as a Responsible Authority under the Licensing Act 2003 for a review of the premises licence in respect of premises known as Variety Food & Wine, 53 Ripple Road, Barking, IG11 7NT.

The matter is put to the Licensing Sub-Committee for determination accordingly.

Recommendation

That the Sub-Committee considers the content of this report and appendices, together with any oral submissions given at the hearing, and determines the application.

Reason(s)

Under the Licensing Act 2003 the Council, as Licensing Authority for the area, has a duty to consider and determine each valid application submitted.

1. Introduction and Background

1.1 The Licensing Act 2003 (the “Act”) established the national licensing regime for

- The sale and supply of alcohol;
- Regulated entertainment; and
- Late night refreshment.

1.2 Under the Act, any person wishing to use any premises to provide one or more of the above licensable activities must firstly obtain a premises licence from the local licensing authority for the area. If the licence is intended to include the sale and
supply of alcohol, then the licence must name a ‘Designated Premises Supervisor’ (DPS) who holds a personal licence issued by the local licensing authority for the area within which they live.

1.3 Premises licences are generally granted for the duration of the business to which they apply. While premises licences are not subject of an annual renewal process, an application for a review of that licence may be made by any responsible authority or other person at any time, if there are concerns relating to one or more of the four stated licensing objectives.

1.4 The relevant licensing objectives are:

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

1.5 Applications for review of a premises licence are advertised at the premises concerned with opportunity given for further representations to be lodged within a four-week period.

1.6 Unless an application for a review of premises licence is withdrawn, the application is to be determined at a public hearing by the Council’s Licensing Sub-Committee.

1.7 Upon consideration of a review application, the Sub-Committee may decide to take any of the following steps

- To modify the conditions of the licence;
- To exclude a licensable activity from the scope of the licence;
- To remove the Designated Premises Supervisor (DPS);
- To suspend the licence for a period not exceeding three months; or
- To revoke the licence.

2. Issues

The review application under consideration

2.1 On 16 October 2017, the Council’s Trading Standards Service applied for a review of the premises licence held by Mr Yilmaz Koca in respect of the trading premises known as Variety Food & Wine, located at 53 Ripple Road, Barking, IG11 7NT. A copy of the application is attached at Appendix A to this report.

2.2 The application is made under the first and fourth licensing objectives concerned respectively with ‘the prevention of crime and disorder’ and ‘the protection of children from harm’.

2.3 The grounds for review relate to:

- The seizure of illicit tobacco products found around the premises on 12 July 2017 and offences relating to the possession of duty evaded products and the Tobacco Related Product Regulations 2016; and that
On 7 August 2017 the premises CCTV was inoperative and unable to provide any footage or images as required by officers, in breach of the conditions of the premises operating licence.

2.4 Under the review application Trading Standards seek:

- The suspension of the premises licence for a minimum of three weeks to provide time for the premises management to implement a new system to ensure compliance with all legal and licensing requirements;
- That the premises employ a new DPS to oversee and monitor the day to day operation of the business; and
- To improve the current state of the CCTV or to replace the CCTV in the premises in accordance with the below.

2.5 There are no other representations submitted in support of the review application.

The premises licence

2.6 The premises operate as a convenience / grocer’s store. It is licensed by the Council, under the Licensing Act 2003, for the retail sale of alcohol for consumption off the premises. A copy of the licence is attached as Appendix B. The licence includes a plan of the premises.

2.6 The licence is held by Mr Yilmaz Koca. Mr Koca has held the premises licence since 12 May 2017.

2.7 Mr Koca is also the DPS named upon the licence. Mr Koca holds a Personal Licence issued by the London Borough of Enfield. Mr Koca has been named as the DPS upon the premises since 12 May 2017.

2.8 The hours for which the premises is licensed are

- Monday to Saturday from 08.30 to 23.00;
- Sunday from 10.00 to 22.30;
- Good Friday 08.00 to 22.30; and
- Christmas Day 12.00 to 15.00 and 19.00 to 22.30

2.9 The licence is subject to the mandatory licence conditions under the Act relating to:

- Condition 1.1 - A prohibition on alcohol sales at any time when there is no DPS;
- Condition 1.2 - A requirement that every sale of alcohol must be authorised by a person who holds a personal licence;
- Condition 1.3 - A requirement to establish an age-verification system; and
- Condition 1.4 - A restriction on alcohol sales below the cost of Duty plus VAT.

2.10 The licence also subject to the additional conditions consistent with the operating schedule provided as part of the application. These conditions require:

- Condition 2.1 - That a ‘Challenge 21’ scheme shall be operated;
- Condition 2.2 - That the premises shall provide, maintain and operate a CCTV system with a 31-day library of recordings;
Condition 2.3 - The maintenance of a ‘refusals’ book;
Condition 2.4 - A record of staff authorised to sell alcohol;
Condition 2.5 - Staff to be trained before making alcohol sales and that training to be recorded;
Condition 2.6 - Staff to be trained on under-age sales and that training to be recorded;
Condition 2.7 - Alcohol to be bought from reputable sellers;
Condition 2.8 - No alcohol to be bought from door to door sellers;
Condition 2.9 - Receipts to be maintained for all purchases of alcohol; and
Condition 2.10 - All required documentation to be maintained and made available within 7 days upon request.

The premises operating history

2.11 The premises have operated under premises licences issued by this Authority since the introduction of the Licensing Act 2003 in 2005.

2.12 However, the premises have only operated under Mr Koca, the current licence holder, for the past six months.

Home Office Guidance to local licensing authorities

2.13 The Home Office has published Guidance under Section 182 of the Licensing Act 2003 to local licensing authorities. Reviews in connection with crime are dealt with under Sections 11.24 to 11.28 of the latest edition of the Guidance published April 2017. The Guidance states:

“11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority’s role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 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.

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.

11.27 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 the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
• For the sale and distribution of illegal firearms;
• For the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
• For the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
• For prostitution or the sale of unlawful pornography;
• By organised groups of paedophiles to groom children;
• As the base for the organisation of criminal activity, particularly by gangs;
• For the organisation of racist activity or the promotion of racist attacks;
• For employing a person who is disqualified from that work by reason of their immigration status in the UK;
• For unlawful gambling; and
• For the sale or storage of smuggled tobacco and alcohol.

11.28 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.”

Local area

2.14 A map of the local area is attached as Appendix C. The location of the application premises is marked on the map.

3. Options Appraisal

3.1 The Sub-Committee is advised that the hearing is of a quasi-judicial nature and representations from all parties, both written and verbal, will form part of the matters that are to be considered.

3.2 The Sub-Committee is required to consider each application on its own individual merits with all relevant matters taken into account. Findings on issues of fact should be on the balance of probability.

3.3 Having considered the application, the representations and all relevant submissions, the Sub-Committee must decide what action is appropriate to promote
the licensing objectives. In doing so the Sub-Committee may decide to take any of the steps set out in section 1.7 of this report or to take no action.

3.6 In reaching its decision, the Sub-Committee must have regard to:

- The Act;
- Secondary regulations;
- The Guidance issued to Local Licensing Authorities by the Home Office (current version April 2017); and

3.7 In the event that any party is aggrieved by the decision of the Sub-Committee, they have the right to appeal the decision to the Magistrates Court. Appeals may be made within 21 days of notification of the Sub-Committee’s decision.

4. Consultation

4.1 The application has been subject of public consultation in accordance with the statutory provisions. The application has been advertised by way of public notice displayed at the premises and notifications have been provided to all responsible authorities and ward councillors.

6. Legal Implications

Implications completed by: Simon Scrowther, Litigation Lawyer, Corporate Legal

6.1 The London Borough of Barking and Dagenham, as Licensing Authority under the Licensing Act 2003 and subordinate legislation, is empowered to determine applications of this nature.

6.2 Notice must be given of the Licensing Authority’s decision on this matter.

Public Background Papers Used in the Preparation of the Report:

None

List of appendices:

- Appendix A: Application for a review of the premises licence in respect of Variety Food & Wine, 53 Ripple Road, Barking
- Appendix B: Premises licence in respect of Variety Food & Wine, 53 Ripple Road, Barking
- Appendix C: Map of the local area