

PART A

Report to: Licensing Sub-Committee
Date of meeting: 15 May 2017
Report of: Head of Community & Environmental Services
Title: Application for Review of a Premises Licence
Roosters Piri Piri, 38 High Street, Watford WD17 2BS
17/00331/LAINPT

1.0 SUMMARY

1.1 An application for a review of a Premises Licence has been received from Hertfordshire Constabulary in respect of Roosters Piri Piri, 38 High Street, Watford WD17 2BS.

The application is made on the grounds that the premises are undermining the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, public safety, and the protection of children from harm.

No other representations have been received relating to this review.

2.0 RECOMMENDATIONS

2.1 That the Licensing Sub-Committee determines with reasons which, if any, actions available to it as detailed in this report are appropriate for the promotion of the licensing objectives

Contact Officer:

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Report approved by: Alan Gough, Head of Community and Environmental Services

3.0 **APPLICATION**

3.1 Type of application

Application for a review of a Premises Licence under section 51 of the Licensing Act 2003.

3.2 The review application is attached at appendix 1.

3.3 Description of premises

The premises are a take-away (as defined in Policy LP1 of Watford Borough Council's statement of licensing policy) located within the Town Centre. The immediate area is a mix of residential and commercial properties, including a neighbouring licensed take-away. The premises are at the junction of Clarendon Road, the High Street, and the pedestrianised section of The Parade. During the evening, this stretch of the High Street is used by taxis as a drop-off and pick-up point.

3.4 A map of the location of the premises is attached at appendix 2.

3.5 A plan showing the layout of the premises is attached at appendix 3.

3.6 Licensable activities

The following activities are permitted by the existing licence:

Licensable activity	Permitted
Plays	
Films	
Indoor sporting events	
Boxing or wrestling entertainment	
Live music	
Recorded music	
Performances of dance	
Entertainment of a similar description to live or recorded music, or dance	
Provision of late night refreshment	✓
Sale of alcohol for consumption on the premises	
Sale of alcohol for consumption off the premises	

3.7 Licensable hours

	Provision of late night refreshment
Monday	23:00 – 02:30
Tuesday	23:00 – 02:30
Wednesday	23:00 – 02:30
Thursday	23:00 – 03:30
Friday	23:00 – 03:30
Saturday	23:00 – 03:30
Sunday	23:00 – 00:00

3.8 A copy of the current licence is attached at appendix 4.

4.0 **BACKGROUND INFORMATION**

4.1 The following background information is known about these premises:

4.2 Premises licence holder

Mr Tahir Mahmood Mirza

4.3 Current licences held

The current licence is 05/01598/LAPRE and was granted on 28 October 2005. This licence has been in force continually since 24 November 2005, when the Licensing Act 2003 came into force.

4.4 Closing date for representations

13 April 2017

4.5 Visits and Enforcement action

The licensing authority have not received any recent complaints regarding this premises or taken any enforcement action.

4.6 Three complaints have been received by Environmental Health relating to the control of the rubbish generated by the premises over the last 3 years (July 2014, March and August 2016). No formal action has been taken against the premises with regards to these complaints. The premises was brought up to a compliant standard in January 2015 after working with officers, and was provided with advice regarding their duty of care in 2016.

4.7 In responding to the review, although Hertfordshire Fire and Rescue Service did not make any formal representations, they did advise that they had visited the premises and had found that the premises were not complying with the Regulatory Reform (Fire Safety) Order 2005 by not having a fire risk

assessment for the premises. This matter is currently with fire safety inspectors to be addressed by the Fire service under the Order.

5.0 REPRESENTATIONS

5.1 Responsible Authorities

With the exception of the Police, who instigated this review, no representations have been received from any responsible authority.

5.2 Other Relevant Bodies

No representations have been received from any other relevant body.

6.0 POLICY CONSIDERATIONS

6.1 The following provisions of the Licensing Act 2003 apply to this application:

- Sections 51 and 52
These sections details how a review application should be made and the process which should be followed in determining the application.
- The Licensing Act 2003 (Hearings) Regulations 2005 (as amended)
These regulations detail how hearings should be conducted to determine applications submitted under the Licensing Act.

6.2 Statutory guidance

This application was received on 16 March 2017, before the most recent statutory guidance was issued in April 2017. Therefore, the guidance which applies to this application is the version issued in March 2015.

The following provisions of the Secretary of State's guidance (March 2015) apply to this application:

- Chapter 11
This chapter gives guidance around the review process and determining an application for a review.

6.3 Statement of licensing policy

The following paragraphs of the licensing authority's statement of licensing policy apply to this application:

- LP13 (Licence Reviews)
This policy explains which matters will be considered very seriously upon a review of a Premises Licence; that an evidentiary basis for the allegations made must be laid before the licensing authority; that it is

not always appropriate for responsible authorities to exhaust the relevant legal powers at their disposal before calling for a review; and that it is not for the Licensing Sub-Committee to attempt to go behind the finding of the Courts or other legal bodies with regards to convictions or failure to take action.

- Appendix 1 (Licence Review Guidelines)
These guidelines were produced to maintain a degree of consistency and transparency in decision-making with regards to reviews.

6.4 The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

6.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life. For this reason, the licensing authority's statement of licensing policy requires any party making an application for a licence review to prove the facts on the balance of probabilities (that is, they are more likely than not to have occurred). Robust evidence must be presented and not just anecdotal or hearsay evidence.

7.0 **SUMMARY OF APPLICATION**

7.1 The Police are seeking amendments to the licence which is in force at Roosters Piri Piri, 38 High Street, on the grounds that they are appropriate for the promotion of all four licensing objectives. The full application is attached at appendix 1.

7.2 The application highlights instances of two reported assaults at the premises, and three further reports of separate incidents at the premises, all between 4 and 12 March 2017. Footage of the incident of 4 March was circulated widely on social media and featured in the press.

7.3 The application makes reference to a number of concerns that the Police have with the operation of the premise and as a result of these incidents. These include not having suitable staff available at the premises to prevent a sustained assault, not calling the Police for assistance in dealing with an assault, and a lack of positive prevention and action from the premises in dealing with such incidents. The Police do mention that the incident on 4

March was not reported by the premises to the Police, but there is mention that later incidents were reported, specifically an incident report on 5 March 2017, and the assault of 12 March 2017.

7.4 The application specifically requests that the Sub-Committee reduce the hours during which late night refreshment can be provided at the premises to 00:00 daily.

7.5 The Police also request that, should the hours not be reduced to midnight, the following additional conditions are considered:

- Reduction in current hours
- 2 x SIA door staff in high visibility clothing are to be in place at the premises– one to be positioned outside the premises to manage entry to the premises, and one inside to prevent and, if required, manage any disorderly behaviour
- All assaults resulting in physical injury to a patron or member of staff must be reported immediately to the Police via 999 or 101
- Any door staff to sign on and off duty with contact numbers, so officers can contact possible witnesses in the event of a crime report
- An incident book to be kept at the premises and a copy of any incidents to be provided to the Police each week for the next 3 months from the date of the hearing – this needs to include reports to Police and those which are dealt with internally
- A maximum capacity of 10 people during licensed hours
- All staff to be trained in first aid
- The front of the premises will be kept in good repair at all times whilst the premises trades as a late night refreshment premises
- The front of the premises from 20:00 until close shall be cleaned and cleared of any discarded litter at least once per hour
- To notify Hertfordshire Constabulary with full details of any person delegated with responsibility to ensure the licensing objectives are met if Tahir Mirza should be absent for more than 7 days from the premises

- During all times that licensable activities take place a member of staff will be on duty who is able to download and provide CCTV footage when requested by any responsible authority
- Suitably worded notices will be prominently displayed in respect of noise and anti-social behaviour

7.6 The application makes reference to supporting information, marked as exhibits RB01 to RB04. This information has been served on the applicant, including copies of the footage referred to within the application. The licensing authority have also received copies of this footage.

7.7 Response of Mr Tahir Mahmood Mirza

At the time of writing this report, no formal response has been received from Mr Mirza. However, the Police and the premises have been in contact to discuss the review and the concerns contained therein.

7.8 The Police and licensing authority have been contacted by Mr Mirza's brother, Mr Khalid Mirza, who has advised that his brother is currently unable to attend any meetings due to ill health. The Police met with Mr Khalid Mirza and Mr Shahid Hussain, who is the lead on UK and International Franchise Development, on 10 April 2017. The licensing authority were present at this meeting as an observer. There did appear to be merit in meeting, and several topics were put forward by the premises representatives, including investigating the provision of door staff, restricting the menu on offer to speed up service and assist in customer turn around, attempts to deal with litter and noise, additional signage in the premises, investigating staff training, updating the existing accident book, fixing the broken door, reviewing the CCTV provision, nominating a single point of contact, and a capacity of 10 people after certain hours. These points were put across in response to the concerns raised by the Police.

7.9 At the time of writing this report, however, no correspondence has been seen by the licensing authority which confirms the details of any proposals which have been accepted by both parties.

8.0 **OFFICERS' OBSERVATIONS**

8.1 Officers wish to highlight, as mentioned in paragraph 7.8, that the Police have met with representatives of the licence holder to discuss this review and the concerns raised within the review. Members are encouraged to enquire as to the status of such discussions and whether any agreement has been reached between the parties. Members may wish to consider any such agreement as

the starting point of any decision, since any agreement would be with the consent of both parties to the review.

- 8.2 Under the licensing authority's own licence review guidelines, the voluntary acceptance or proposal of additional conditions, and the willingness to be involved with mediation, can be considered to be mitigating factors when determining a review.
- 8.3 If the parties have not reached agreement, then it will be up to the Sub-Committee to consider the application and submissions put before them.
- 8.4 Officers can advise that no early warning was given to the premises by the Police in respect of the incidents identified by the Police. Paragraph 11.10 of the statutory guidance states that it is good practice for responsible authorities to give licence holders warnings and early notice of concerns, with a review to follow if such concerns are not addressed.
- 8.5 The licensing authority's statement of licensing policy, at policy LP13, does however recognise that such early warnings are not always practicable or desirable. Members may wish to enquire as to why the Police did not address their concerns direct to the premises in the first instance.
- 8.6 The Police have provided a summary of the assault which occurred within the premises on 4 March 2017, and state that this was a serious assault. It must be noted that enquiries are still on-going in respect of this incident and it may be that not all details of the case can be released. Members are advised that, if this was a serious assault resulting in serious injury, then this may be considered to be an aggravating factor under the licence review guidelines.
- 8.7 Members are reminded that, in accordance with policy, an evidentiary basis for the concerns and allegations laid out in the review must be established and laid before the Sub-Committee. The Police, as applicant for this review, must be held to prove the facts of the application on the balance of probabilities.
- 8.8 Members are asked to note paragraph 11.20 of the statutory guidance with regards to their options for determining the review, which states:

“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.”

- 8.9 Members are also asked to note paragraph 11.23 of the statutory guidance which states:

“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.”

- 8.10 Members are reminded that a review is an opportunity to consider whether the licensing objectives are being undermined by the actions of a specific premises and the licence holder, and what action, if any, is appropriate in order to redress the balance. The application must be determined based upon the submissions put before you and on the facts of the individual case. A review is not an opportunity to punish a licence holder. This is reflected in the need for any decision to be appropriate and proportionate to the promotion of the licensing objectives, and to aim to address the concerns that resulted in the review being submitted.
- 8.11 The officers’ observations and the comments regarding the representations are in no way meant to bind Members. They are for guidance only and Members may attach whatever weight they see fit.
- 8.12 Members are also to attach whatever weight they see fit to both the submissions of the applicant, and to the submissions of the licence holder, when considering this application.
- 8.13 The Sub-Committee are reminded that they have a duty to “have regard” to the licensing policy but are not bound by it. However, should Members wish to depart from the policy then detailed reasons for this must be given as part of any decision.

8.14 In determining this application, the Sub-Committee must have regard to the application and any relevant representations and take such steps as it considers appropriate for the promotion of licensing objectives. For this case, the steps are:

1. to take no further action;
2. to issue a formal warning to the premises supervisor and/or the licence holder
3. to modify the conditions of the licence;
4. to suspend the licence for a period not exceeding three months;
5. 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.

Where the Licensing Sub-Committee is minded to modify the conditions of the licence, it may do so either permanently or for a period not exceeding 3 months.

The Licensing Sub-Committee is asked to give full reasons for its decision.

The Licensing Sub-Committee must make its decision within five working days of the end of the hearing. Any decision of the Licensing Sub-Committee does not come into effect until either:

- the expiry of 21 days from the date of the decision (the period given for appealing the decision); or
- If the decision is appealed against, until the appeal is disposed of.

Any party to the proceedings may appeal against the decision of the Licensing Sub-Committee.

Appendices

Appendix 1 – Application for review

Appendix 2 – Location of premises

Appendix 3 – Layout plan

Appendix 4 – Premises licence (ref: 05/01598/LAPRE)

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Licensing Act 2003

Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office March 2015)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (November 2013 – November 2018)

Watford Borough Council Pool of Model Conditions (March 2013)

File Reference

Roosters