

APPLICATION FOR A REVIEW OF A PREMISES LICENCE

Committee	Licensing Sub-Committee
Officer Contact	Jhini Mukherjee, Licensing Officer; Ex 01895 277443 (7443)
Papers with report	Appendix A - Review Application Appendix B - Officer's Recommendation Appendix C - Photos of displayed notice of review on the premises and the council's office Appendix D - Representation from Metropolitan Police Appendix E - Current premises licence Appendix F - Site Map of the local area
Ward name	Pinkwell

1. SUMMARY

To consider a review of the premises licence pursuant to Section 51 of the Licensing Act 2003 ("LA03") in relation to Guru Kirpa Traders Ltd (trading as Ahuja's Superstore) of 1-3 Redmead Road, Hayes, UB3 4AU. A copy of the application for review and supporting statement is attached as **Appendix A**.

2. RECOMMENDATION

The Licensing Sub-Committee is requested to consider the review application in light of all the relevant information and consider:

1. The modification of the Premises Licence conditions. The Sub-Committee may wish to consider suspending the Premises Licence (not exceeding 3 months) in addition to modifying the conditions; or,
2. Revocation of the Premises Licence.

The Officer's Recommendation at **Appendix B** provides details of the proposed modification of the Premises Licence conditions

3. INFORMATION

- 3.1 On 7 December 2016, a multi-agency operation was carried out which involved inspections at various off-licensed premises in Hillingdon identified as possibly selling counterfeit goods. Ahuja's Superstore of 1-3 Redmead Road, Hayes, UB3 4AU was one of those premises.

Officers from the council's Trading Standards team and Metropolitan Police accompanied by sniffer dogs inspected the Ahuja's Superstore.

A total of 4,565 counterfeit cigarettes, 3,050g of counterfeit hand-rolling tobacco, 2,589g of non-duty paid oral tobacco and 450 counterfeit DVDs, were seized from the premises on the day.

- 3.2 On 19 May 2017, the Licensing Authority received an application to review Ahuja's Superstore. The review was requested on the grounds of prevention of crime and disorder.
- 3.3 Statements submitted by Trading Standards and the Metropolitan Police Services indicate that Muhammed Iqbal, the person who was behind the counter at the time, was an illegal immigrant and employed unlawfully at the premises. He was arrested for the offence and taken to police custody where he confirmed that he worked at the premises from 08.00 hours to 18.00 hours every day and was paid £300 in cash every week.
- 3.4 Whilst the spelling of Mr Iqbal's name differs in the witness statement by the Trading Standards Officer and by the Metropolitan Police, they are referring to the same individual.

4. CONSULTATION

- 4.1 The 28 days consultation period started after the review was received by the Licensing Authority on 19 May 2017. As required by the legislation, the notice of the review was displayed at the premises and a copy of it was also displayed on the Civic Centre Noticeboard and also on the Council's website. Photos of the displayed notice on the premises and the Council's office are appended as **Appendix C**.

4.2 Closing date for representations

16 June 2017

5. REPRESENTATIONS

- 5.1 The Metropolitan Police Services have submitted a relevant representation in support of a review. They have sought a revocation of the Premises Licence on the grounds that the premises have been used for criminal purposes. Alternatively, a list of conditions have been proposed in the event that the Sub-Committee is not minded to revoke the Premises Licence. The relevant representations submitted by the Metropolitan Police Services been attached as **Appendix D**.

6. BACKGROUND INFORMATION

6.1 Current Premises Licence

The premises has been licensed as an off-licence since 2006. The current licence is in the name of the company, Guru Kirpa Traders Ltd.

The director of the company is Rajinder Singh Khurana. Mr Khurana is also the DPS of premises. A copy of the premises Licence has been attached as **Appendix E**.

6.2 Description of the Premises

The premises is located on a small parade of shops and the surrounding area is mainly residential. A site map of the local area and photographs of the neighbourhood is attached as **Appendix F**.

6.3 Licensable Activities currently authorised

<u>Activity</u>		<u>Permitted</u>
Sale of Alcohol:	Consumption off the premises	✓

6.4 Licensable Activity and opening hours currently authorised

	Sale of Alcohol	Opening Hours
Monday	07:00-00:00	07:00-00:00
Tuesday	07:00-00:00	07:00-00:00
Wednesday	07:00-00:00	07:00-00:00
Thursday	07:00-00:00	07:00-00:00
Friday	07:00-00:00	07:00-00:00
Saturday	07:00-00:00	07:00-00:00
Sunday	07:00-00:00	07:00-00:00

7. OFFICER'S OBSERVATIONS

- 7.1 The witness statement (Appendix 1) from the Trading Standards Officer, and the representation from the Metropolitan Police Services (Appendix 4), clearly mention the presence of illegal immigrants at the premises on more than one occasion. The first, Mr Iqbal, was in employment at the premises and was working from 08.00 hours to 18.00 hours every day and was being paid £300 in cash every week. A second visit was made to the premises by the Metropolitan Police and Trading Standards on 19 May 2017 and a different person was found behind the counter who identified himself as Captain Singh. On questioning him further the Metropolitan Police concluded that he too was in the country illegally. Reference to the visit has been detailed out in Appendix 4.
- 7.2 On a subsequent inspection by the Licensing Officers on 1 June 2017, the DPS was again absent from the premises and the person behind the counter said that he is only helping out and does not have any knowledge about the licensing issues relating to the shop. A DPS need to be able to evidence that they have 'effective control and supervision' of the premises. The DPS has been found absent from the premises on multiple occasions and seems to be unable to operate the premises in compliance with the licensing conditions thereby severely undermining the promotion of the licensing objective of the prevention of crime and disorder.
- 7.3 In a key judgement for the licensed trade [*East Lindsey District Council -v- Abu Hanif (t/a Zara's Restaurant)*], a High Court Judge has decided that a licensing authority's decision to revoke a premises licence for employment of an illegal worker was correct. Mr Justice Jay decided that remitting the case back to the Magistrate's Court was not

appropriate as he considered the Council's decision to revoke the licence was correct. There was a clear inference that Mr Hanif knew that he was employing an illegal worker and so a deterrent approach was justified as he was not only defrauding HMRC but exploiting a vulnerable person. Mr Hanif was ordered to pay High Court costs of £15,000 in relation to the licensing appeal to the High Court. The important point in relation to this review is that a licence can be revoked if someone has knowingly hired illegal persons.

8. RELEVANT PARAGRAPHS OF THE S182 GUIDANCE

8.1 Paragraph 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."

8.2 Paragraph 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 in the interests of the wider community and not those of the individual licence holder."

8.3 Paragraph 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 knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;

- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol."

8.4 Paragraph 11.28:

"It is envisaged that licensing authorities, the police, 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."

8.5 Chapter 10 of the S182 Guidance contains information on the imposition of conditions on the Premises Licence.

9. RELEVANT SECTIONS OF THE COUNCIL'S LICENSING POLICY

9.1 The Sub-Committee's attention is drawn to the following, particularly relevant sections of the London Borough of Hillingdon's Licensing Policy:

9.1.1 At paragraph 7.9: "When making decisions about an application the Licensing Sub- Committee will have regard to the Borough's Crime Prevention Strategy and any conditions attached to licences or certificates will so far as possible reflect local crime prevention strategies."

9.1.2 At paragraph 17.2: "Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity."

10. LEGAL COMMENTS

10.1 The Licensing Authority must review the premises licence where it is alleged, in an application for review by a Responsible Authority or other persons, that any of the licensing objectives are being undermined.

10.2 Following receipt of a review application the Licensing Authority must hold a hearing to consider it and any relevant representations. At the hearing, the Sub-committee must, having regard to the application and any relevant representations, take such of the steps following steps (if any) as it considers appropriate for the promotion of the licensing objectives:

- modify the conditions of the licence;
- 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; and/or
- 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.

- 10.3 The Sub-Committee must also have regard to the London Borough of Hillingdon's Statement of Licensing and the Secretary of State's Guidance issued under the Licensing Act 2003 when deciding what action, if any, to instigate. The terms of the Statement of Licensing Policy and Guidance are highly persuasive, but are not binding on the Licensing Sub-Committee. The Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy and or Guidance if it considers there are clear and justifiable reasons to do so. Full reasons must be given if this is the case.
- 10.4 The Sub-Committee can only consider matters within the application or that have been raised through relevant representations from and each application will be decided on a case to case basis.
- 10.5 The Sub-Committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In deciding what remedial action, if any, it should take the Sub-Committee must direct its mind to the causes or concerns which the application and representations identify. The remedial action should generally be directed at these causes or concerns and should always ensure that any response is necessary and proportionate.
- 10.6 Members are referred to the Secretary of State's Guidance on conditions, specifically paragraph 1.16 and chapter 10 which state that licensing conditions should be practical and enforceable, tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions will not be necessary if they duplicate a current statutory requirement. Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.
- 10.7 Under the Human Rights Act 1998 the Sub-Committee needs to consider the balance between the rights of the applicant, licence holder and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.
- 10.8 Where the Licensing Authority determines an application for review it must provide written notice and reasons for its decision.
- 10.9 The licence holder, applicant or any party that made relevant representations have the right to appeal the decision of the Licensing Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the Licensing Authority of the decision to be appealed against.