

REPORT TO: LICENSING SUB COMMITTEE

DATE: 14 JANUARY 2019

TITLE: APPLICATION FOR REVIEW OF PREMISES LICENCE - ESSENCE OF INDIA, OASIS HOTEL, 2 HART ROAD, HARLOW, CM17 0HL

LEAD OFFICER: RACHEL CROUCH , LICENSING OFFICER
(01279) 446005

CONTRIBUTING OFFICER: DAVID TAYLOR, PRINCIPAL ENVIRONMENTAL HEALTH OFFICER
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RECOMMENDED that:

The Sub Committee consider all the evidence presented and determines the case in accordance with the provisions of the Licensing Act 2003 S52.

BACKGROUND

1. To consider an application for review of the premises licence in respect of Essence of India, Oasis Hotel, 2 Hart Road, Harlow, CM17 0HL made by Peter Jones, Licensing Officer, Essex Police received and validated on the 30 November 2018 (Appendix 1).
2. In accordance with the Licensing Act 2003 regulations, public notices have been displayed and published (Appendix 2). Responsible authorities were notified of the application.
3. Essence of India is an Indian restaurant situated within the Oasis Hotel building at 2 Hart Road, Harlow, CM17 0HL. The existing Premises Licence (HARLOW/PREM/0110) was issued by Harlow Council on 3 October 2005 to Mr Hussain Imdad and Mr Abdul Salam (Appendix 3).
4. The licensable activities are limited to:

The sale or supply of alcohol (on the premises)
Monday to Saturday 11.00 to 00.00
Sunday 12.00 to 23.30

Non-Standard Hours
25 December 12.00 to 23.30
31 December 11.00 to 00.00
1 January 00.00 to 00.00
Good Friday 12.00 to 23.30

Provision of Late Night Refreshment (indoors)
Monday to Saturday 23.00 to 00.30
Sunday 23.00 to 00.00

Non-Standard Hours
25 December 23.00 to 00.00
31 December 23.00 to 00.00
1 January 00.00 to 24.00
Good Friday 23.00 to 00.00

5. The premises licence has not previously been reviewed. No formal action has previously been taken against the holder of the licence.
6. On 9 November 2018, Immigration Compliance and Enforcement (ICE) Officers and Peter Jones, Essex Police Licensing Officer attended the Essence of India restaurant situated at the Oasis Hotel, 2 Hart Road, Harlow.
7. Upon entry members of staff working in the kitchen were taken to the front of the restaurant. Three members of staff and the manager were questioned. One of the kitchen workers was found to be working with the incorrect immigration status.
8. An Illegal Working Civil Penalty Referral Notice was completed and served in respect of the illegal worker.
9. The Licence Holder and Designated Premises Supervisor Licence holder was not in attendance.
10. On 14 December 2018 the Licensing team received a supplementary evidence bundle (Appendix 4) from Mr Peter Jones, Essex Police Licensing Officer.
11. On 20 December 2018 Mr Abdul Salam, the person notified to the Council as being the Designated Premises Supervisor (DPS), visited the Council Offices with documentation received by Essex Police in respect of the review application and a copy of his P45 which confirms his employment with the Essence of India Ltd ceased on 20 March 2014. Mr Abdul Salam confirmed he hasn't worked at the premises or been involved with the company since 20 March 2014.
12. Mr Abdul Salam notified the Council he has moved from his address on the premises licence and only become aware of the review as a result of his post being redirected. Mr Abdul Salam was advised that he has a duty by Section 33 of the Licensing Act 2003 to notify the Licensing Authority of change of address. A person commits an offence if he fails, without reasonable excuse, to comply with this section. An application form and request of the statutory fee £10.50 has been sent to Mr Abdul Salam to update the premises licence and his personal licence.
13. Mr Abdul Salam remains as the DPS for Essence of India until such time as he correctly notifies the Council that he no longer undertakes these duties. Mr Abdul Salam has confirmed that he has not been working or authorising the Sale of Alcohol since he left on 20 March 2014. It would appear that the premises

licence holders have permitted licensable activities to take place since 20 March 2014 in contravention of the requirements of the premises licence.

14. The premises no longer have the correct authorisation in place as in accordance with Section 19 of the Licensing Act 2003, mandatory conditions where licence authorises supply of alcohol.
15. On 20 December 2018, Council Officers visited the premises at 8.15pm following Mr Abdul Salam's notification and spoke with Mr Kaikobad Meah who identified himself as the restaurant manager with day to day control of the premises.
16. On 20 December 2018 Mr Kaikobad Meah was advised by Rachel Crouch, Licensing Officer not to sell any alcohol as in accordance with the premises licence issued by the Council (HARLOW/PREM/0110). Mr Kaikobad Meah was advised that as a result of Mr Abdul Salam's notification and request to be removed as DPS the premises did not have the correct authorisation in place to enable the sale of alcohol at the premises as in accordance with the Licensing Act 2003, section 19.
17. Mr Kaikobad Meah was asked to remove the alcohol from the premises as in accordance with Licensing Act 2003, section 137 (Exposing alcohol for unauthorised sale) and section 138 (Keeping alcohol on premises for authorised sale).
18. On 20 December 2018 Mr Kaikobad Meah was advised by Rachel Crouch, Licensing Officer that the premises could remain trading, however, the sale of alcohol and late night refreshment would not be authorised.
19. Mr Kaikobad Meah was advised to speak with the premises licence holder Mr Hussain Imdad and requested to seek advice on what steps can be taken to reinstate the licensable activities.
20. Officers visited later in the evening on 20 December 2018 and confirm all alcohol was removed from the premises. Members of the Licensing Team have no evidence to suggest that alcohol has been sold from the premises since 20 December 2018.
21. On 21 December 2018 letters confirming the visit to the premises on 20 December were sent to licence holder Mr Hussain Imdad, Mr Kaikobad Meah and Mr Abdul Salam which outlined the advice given to Mr Kaikobad Meah and provided details of the offences under the Licensing Act 2003.
22. Officers have been unable to contact Mr Hussain Imdad via telephone. On 2 January 2019 the Licensing team wrote to Mr Hussain Imdad to request that he contact the Licensing team to discuss the premises licence at the Essence of India and current status. No reply has been received at the time of writing the report.

23. The Council has not received an application under the Licensing Act 2003 for transfer of premises licence or application to vary the Designated Premise Supervisor.

OPTIONS

24. The Licensing Act 2003 supported by the guidance issued under Section 182 provides the Licensing Authority with a range of appropriate powers for promotion of the licensing objectives when determining a review. The options are set out in clauses 11.17 to 11.19. The powers are:

- a) To modify the conditions of the premises licence or to add new conditions,
- b) To exclude a licensable activity from the scope of the licence,
- c) Removal of a designated premise supervisor,
- d) Suspension of the licence for a period of not more than 3 months or,
- e) To revoke the licence.

25. Section 11.27 of the guidance makes reference to criminal activity which should be treated particularly seriously and includes the employing a person who is disqualified from that work by reason of their immigration status in the UK.

26. Grounds for appeal against the decision of the Licensing Sub Committee are made available by section 181 and schedule 5 of the Act. Schedule 5, 8 provides that an appeal may be against the decision by:

- a) The applicant for the review,
- b) The holder of the premises licence,
- c) Any other person who made a relevant representation in relation to the application.

27. The appeal procedure satisfies the requirement of the Human Rights Act.

IMPLICATIONS

Place (includes Sustainability)

As set out in the report

Author: **Michael Pitt on behalf of Graeme Bloomer, Head of Place**

Finance (Includes ICT)

None specific

Author: **John Dyson on behalf of Simon Freeman, Head of Finance**

Housing

None specific.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing

It is important to ensure that only 'fit and proper' persons are granted a Licence. Failure to do so could influence or have implications for the wellbeing and safety of the community

Author: **Jane Greer, Head of Community Wellbeing**

Governance (includes HR)

Members are required to consider the review application and determine the application in accordance with the promotion of the licensing objectives. Further legal advice in relation to any aspect of this application will be provided by an Officer at the Sub Committee hearing to enable the process to be fair to all parties.

Author: **Simon Hill, Head of Governance**

Appendices

Appendix 1- Application for Review of Premises Licence by Essex Police

Appendix 2 - Copy of Public Notice

Appendix 3 – Essence of India Premises Licence HARLOW/PREM/0110

Appendix 4 – Essex Police Supplementary Documentary Information in support of Review

Glossary of terms/abbreviations used

DPS - Designated Premises Supervisor

ICE – Immigration Compliance and Enforcement

Background papers

Guidance issued under Section 182