

LICENSING SUB-COMMITTEE

DATE	11 th May 2021
REPORT OF	Sharon Wroot – Executive Director for Environment, Economy and Resources
SUBJECT	Receipt of representations regarding an application for a new Premises Licence at Calcutta Street Kitchen Indian Restaurant, 17 Sea View Street, Cleethorpes, DN35 8EU.
STATUS	Open

CONTRIBUTION TO OUR AIMS

Stronger Economy:

Support for premises that promote the licensing objectives through appropriate action against those that do not.

Stronger Community:

Reduce incidence of crime, anti-social behaviour and public nuisance associated with licensed premises

Promotion of public safety and child protection in relation to licensed premises

EXECUTIVE SUMMARY

The Licensing Authority under the Licensing Act 2003 (“the Act”) has a duty to determine applications for any Licence under the Act where relevant representations have been made. This duty has been delegated to the Licensing Sub-Committee. **This case involves a representation made by Mr Gardner on the grounds of Crime & Disorder and The Prevention of Public Nuisance.**

RECOMMENDATIONS

To determine the application for a Premises Licence and consider any relevant representations under s18 of the Act. To take such steps as considered **appropriate** for the promotion of the licensing objectives.

REASONS FOR DECISION

Must have regard to:-

- North East Lincolnshire Council’s Statement of Licensing Policy.
- Guidance issued by the Secretary of State under s.182 of the Act.

Steps taken must be **appropriate** for the promotion of the Licensing Objectives, namely:-

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

1. BACKGROUND AND ISSUES

These are fully contained in the report of Kate Todd, Licensing Enforcement Officer.

2. RISKS AND OPPORTUNITIES

Crime and Disorder – If the Sub-Committee finds this licensed premises has undermined the licensing objectives, it must consider what, if any, steps are appropriate to prevent this. If appropriate steps are not taken there is a risk that the licensing objectives will not be promoted.

Human Rights – The premises licence holder is entitled to a fair hearing; article 6 of the European Convention of Human Rights applies. Article 8, the right to respect for private and family life, also applies as the “licence” is crucial to the livelihood of the premises licence holder. The Human Rights of the wider community are also engaged.

Equality and Diversity – No direct effects

Value for Money – The aim must be to take action that prevents problems persisting and using further licensing resources.

The impact on the Social, Economic and Environmental well-being of the Borough – Action taken to ensure that all licensed premises promote the licensing objectives will have a positive impact in these respects.

Environmental Sustainability Implications - None

3. OTHER OPTIONS CONSIDERED

The steps which may be taken are:

- Grant the licence with modified conditions. This means the proposed conditions could be altered or omitted or new conditions added.
- Exclude any licensable activity to which the application relates.
- Refuse to specify the named DPS
- Reject the application

If none of these steps is considered appropriate the application should be granted in the form it was made.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

There are potential positive reputational implications for the Council resulting from the decision where appropriate action has been seen to have been taken. An action plan has

been agreed with the Council's communications service covering information requirements and communications channels to be utilised.

5. FINANCIAL CONSIDERATIONS

This report relates to a determination required in response to a an application made under the Licensing Act 2003. The process is governed by statutory regulations and the fees involved are statutory. There are no direct resource or funding implications in the first instance but there may be on appeal (see Section 5).

6. FINANCIAL IMPLICATIONS

The premises licence holder, the responsible authorities and any relevant person have a right of appeal against the decision made to the Magistrates and/or High Court. If the Licensing sub-committee takes a step which is considered to be unnecessary or unlawful by a higher court there is a risk that an award of costs may be ordered against the Council in favour of the successful appellant. Such costs are difficult to quantify or estimate.

7. LEGAL IMPLICATIONS

These are covered in the body of the report of the Licensing Officer.

8. HUMAN RESOURCES IMPLICATIONS

There are no Human Resource Implications.

9. WARD IMPLICATIONS

Croft Baker

10. BACKGROUND PAPERS

Please refer to the index of Members Papers.

11. CONTACT OFFICER(S)

Kate Todd, Licensing Enforcement Officer

SHARON WROOT
Executive Director for Environment, Economy and Resources

LICENSING

LICENSING ACT 2003

Report to Licensing Sub-Committee following receipt of Relevant Representations

***Calcutta Street Kitchen
Indian Restaurant
17 Sea View Street
Cleethorpes
DN35 8EU***

NORTH EAST LINCOLSHIRE COUNCIL
LICENSING AUTHORITY

LICENSING ACT 2003

Report to Licensing Sub-Committee
following receipt of Relevant Representations

1. Summary Of Application - (Full details in Application Form)

1.1 Premises: Calcutta Street Kitchen Indian Restaurant, 17 Sea View Street,
Cleethorpes, DN35 8EU

1.2 Applicant: 2224 Market Limited

1.3 Date Application Received: 18th March 2021

1.4 The Proposed Operation:

The applicant applied for a Premises Licence to include the following:

Sale of Alcohol (On and Off the Premises)

Monday to Sunday 1100 until 0000 hours

Late Night Refreshment

Monday to Sunday 2300 until 0000 hours

Proposed conditions: Please see Annex 2

These are the measures put forward by the applicant to promote the licensing objectives. All conditions have been agreed with Humberside Police:

- *A tamper resistant CCTV system shall be installed, maintained in working order and operated at the premises.*
- *CCTV images shall be retained for a period of no less than 28 days and correctly date and time marked.*
- *Recordings of incidents at the premises must be made secure for inspection by the police, or licensing authority, and provided on lawful request. This means that a member of staff shall be available within 24 hours or by prior appointment who can operate the CCTV system and providing recordings in accordance with lawful requirements.*
- *Challenge 25 shall be implemented, and a proof of age policy is to be applied with the accepted means of proof of age being:*
 - *Passport*
 - *Photo Driving Licence*
 - *A recognised valid photo-id card bearing the PASS hologram*

- *Any future accredited and accepted proof of age, as defined by Humberside Police*

Signs shall be displayed stating that the premises operate a Challenge 25 Policy

- *An incident book shall be kept at the premise in which details of crime and/or disorder that relate to, or are linked with, licensable activities at the premises shall be recorded. This will include any refusal of the sale of alcohol. The incident book shall contain the following details;*
 - *time, date and location of incident.*
 - *nature of the incident*
 - *the result of the incident.*
 - *action taken to prevent further such incidents.*
 - *each entry signed by the DPS or other responsible person employed at the premises and so authorised by the DPS.*

The incident book shall be made available to police or authorised officers of the Licensing Authority upon request. Each entry shall be retained for a minimum period of 12 months from date of completion.

- *All staff responsible for the sale of alcohol shall receive training in the Licensing Act 2003 in regards of the licensing objectives, offences committed under the Act and conditions of the Premises Licence. Written records of this training shall detail the time and date of the training, the name of those trained and the person providing the training. The records shall be retained for a period of no less than 12 months and made available upon request to police and authorised officers of the Licensing Authority.*
- *Polycarbonate/plastic crushable glassware and decanting of all bottles will be implemented for the whole or specified areas of the premises upon reasonable request of Humberside Police or North East Lincolnshire Council Licensing Authority for specific events.*
- *There must be a minimum of 20 covers available inside the premises at all times.*
- *The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal or with a takeaway meal or meal ordered for delivery.*
- *Any alcohol to be taken for consumption away from the premises, as an 'off sale', must be in a sealed container.*

2. Summary of Representations – (Full details in report)

1 representation has been submitted in relation to this application.

2.1 Representation:

2.1.1 Date representations received: 15th April 2021

2.1.2 Persons making representation: Mr Gardner

2.1.3 Licensing objectives affected:

- Prevention of Public Nuisance
- Crime & Disorder

2.1.4 Representation Recommendations:

- Refusal

2. Mediation

Mediation by the Licensing Section was not possible prior to this hearing.

3. Statement of Licensing Policy

The following sections of North East Lincolnshire Council's Statement of Licensing Policy 2015 – 2020 are considered relevant to these representations:

- Licensing Objectives: 2.1 – 2.5
- Consultation: 4.1 – 4.6
- Extent of Control: 6.2.1
- Need: 6.4.1
- Premises Licence: 8.2.1 – 8.2.3
- Mediation: 8.6.2
- Representations: 8.7.2 – 8.7.3
- Prevention of Crime & Disorder: 9.2.4 – 9.2.6
- Prevention of Public Nuisance: 9.4.1 – 9.4.7

4.Guidance issued under Section 182 of the Licensing Act 2003 –

This guidance is provided for Licensing Authorities carrying out their functions. It is regarded by the Government as a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. It does not however replace any statutory provisions of the 2003 Act and it is for the Licensing Authority to take their own professional and legal advice about its implementation.

The following sections of the Guidance are considered relevant to these representations:

- Licensing Conditions: 1.16
- Prevention of Crime & Disorder: 2.1 – 2.6
- Public Nuisance: 2.16 – 2.21
- Advertising Applications: 8.80 – 8.82
- Hearings: 9.31 – 9.40
- Relevant, vexatious and frivolous representations: 9.4 -9.10

5. General Advice on Determination of the Application –

5.1 The sub-committee are advised that findings on any issues of fact should be on the balance of probability.

- 5.2** The sub-committee are advised that in arriving at any decision, it must have regard to relevant provisions of national guidance and North East Lincolnshire Council's Statement of Licensing Policy. Reasons must be given for any departure.
- 5.3** The sub-committee are advised that the final decision should be based on the individual merits of the application and the factual findings made at the hearing.
- 5.4** Section 18 of the Licensing Act 2003 states that where relevant representations have been made and a hearing is held to consider them, the sub-committee can take such of the steps set out below as it considers **appropriate** for the promotion of the licensing objectives – in this case if it is considered the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance or the Protection of Children from Harm are likely to be affected.
- Grant the licence with modified conditions. This means the proposed conditions could be altered or omitted or new conditions added.
 - Exclude any licensable activity to which the application relates.
 - Reject the application

If none of these steps are considered appropriate the application should be granted in the form it was made.

- 5.5** Conditions should be proportionate to the size, style and characteristics of the premises and the activities proposed or taking place and must be appropriate
- 5.6** The sub-committee are advised that they must take into account the following Human Rights provisions:
- Everyone affected by a decision has a right to a fair hearing.
 - Everyone has the right to his private and family life, his home and his correspondence.

6. Observations

- 6.1** A total of 3 representations were submitted by Interested Parties, however only one representation has been accepted.
- 6.2** There have been no representations submitted by any of the Responsible Authorities.
- 6.3** The power of review exists for any licensed premises that do not operate in a way that promotes the licensing objectives. This can ultimately result in revocation of the licence

**Report prepared by– Kate Todd, Licensing Enforcement Officer
30th April 2021**