

REPORT TO: LICENSING SUB-COMMITTEE

31st March 2022

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

Licensing Act 2003 - Review Application - Noble House Restaurant, 43 Osborne Road, Southsea, PO5 3LS

1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider and determine a review application pursuant to section 52 of the Licensing Act 2003 ("the Act") and in respect of the following premises:

Noble House Restaurant, 43 Osborne Road, Southsea, PO5 3LS.

The holder of the premises licence is Mr Albert Ion-Chun Choi.

2. THE REVIEW APPLICANT

The application and grounds for the review are attached as **Appendix A** and has been submitted by Home Office Immigration Enforcement and relates to the following licensing objective:

- Prevention of crime and disorder

3. BACKGROUND INFORMATION

At 20:30 hours on Saturday 23rd October 2021, Home Office Immigration officers attended the Noble House Restaurant where they found three illegal workers working and living on the premises. On entry to the premises the Premises Licence holder Mr Albert Ion-Chun Choi was obstructive towards the officers. Statements submitted as part of this review detail Mr Choi's behaviour and how obstructive he was not only physically trying to prevent access but giving verbal directions in his foreign tongue to staff present who initially refused to engage with the immigration officers. Mr Choi is described as being aggressive and hostile towards the officers.

Attached as **Appendix B** is the Home Office Premises Licence Review pack together with four statements provided by the Immigration Officers who attended the premises giving full details of the visit and the subsequent discovery of three illegal workers.

A copy of the current premises licence is attached as **Appendix C**.

In accordance with the act and prescribed regulations, public notice of the review application was given both at the premises and also at the Civic Offices. In addition, a notice of the review application was also posted on the council website.

The review application was also served on the responsible authorities.

4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

A further representation has been received from PC P Vincent on behalf of the Chief Officer of Police for Hampshire Constabulary. This representation supports the review on the grounds of the prevention of crime and disorder and seeks the revocation of the Premises Licence based on the seriousness of this offence and previous history.

Ten support representations have been received. All these representations are attached at **Appendix D**

At **Appendix E** is an email clarifying the first date in the Home Office review bundle at paragraph 2.9 which should read 23/09/2011 and not 2012 as stated.

5. POLICY AND STATUTORY CONSIDERATIONS

When determining the review application, the committee must have regard to:

- Promotion of the licensing objectives which are;
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- The Licensing Act 2003;
- The adopted Statement of Licensing Policy;
- Judgments of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current statutory guidance issued by the Home Secretary in accordance with section 182 of the Act;
- The representations, including supporting information, presented by all the parties; and
- The human rights of all the parties concerned to ensure both a fair and balanced hearing and to consider the Equality Act 2010 public sector equality duty requiring public bodies to have due regard to the need to:
- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are as follows:
 - i) age, ii) disability, iii) gender reassignment, iv) pregnancy and maternity v) race - this includes ethnic or national origins, colour or nationality, vi) religion or

belief - this includes lack of belief, vii) sex and viii) sexual orientation.

The Statutory Guidance provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 11.1 - *"The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate."*

Paragraph 11.2 - *"At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives."*

Paragraph 11.10 - *"Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation."*

Paragraph 11.16 - *"The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives."*

In reaching a decision upon a review application, the guidance offers assistance to the licensing authority as follows:

Paragraph 11.17 - *"The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder."*

Paragraph 11.18 - *"However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker."*

Paragraph 11.19 - *"Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by*

reducing the hours of opening or by requiring door supervisors at particular times;

- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- suspend the licence for a period not exceeding three months;*
- revoke the licence."*

Paragraph 11.20 - *"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."*

Paragraph 11.21 - *"For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."*

Paragraph 11.22 - *"Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."*

Paragraph 11.23 - *"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 or preventing illegal working. 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 and for the prevention of illegal working in licensed premises. 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."

Paragraph 11.26 - *"Where a 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 objections and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.**"

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 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.

Paragraph 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".**

A copy of the Statement of Licensing Policy, current statutory guidance and the Act has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

In addition members will be aware of Portsmouth City Councils Modern Slavery and Human Trafficking Statement which is also available for reference,

6. APPEALS

An appeal may be made to a Magistrates' court within 21 days of the premises licence holder being notified of the licensing authority's decision. An appeal may be made by:

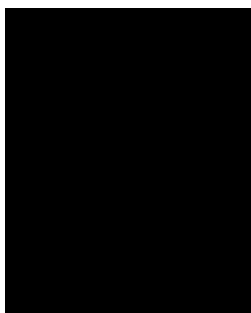
- The applicant for the review;
- the holder of the premises licence; or
- any other person who made relevant representations in relation to the application.

The decision of the committee, following the review hearing, will not have effect until the end of the period allowed for appeal, or until any submitted appeal is disposed of.

7. APPENDICES

- A.** Copy of the redacted review application.
- B.** Copy of Home Office Review Pack and 4 x Statements of Immigration officers attending.
- C.** Copy of the current authorisation.
- D.** Copies of representations from Hampshire Constabulary and support representations received.
- E.** Email from Home Office re clarification of visit dates

THE COMMITTEE IS REQUESTED TO DETERMINE THE REVIEW APPLICATION



For Licensing Manager
And on behalf of Head of Service