

Report to: Licensing sub-committee.

Date of Meeting: 20.09.2018.

Report Title: To consider suspension or revocation of a personal licence as a result of an immigration penalty. Mr Uddin.

Report By: Mike Hepworth, Assistant Director Environment and Place.

Purpose of Report

To decide if the personal licence issued to Mr Uddin by Hastings Borough Council should be either suspended or revoked as a result of him being served with an Immigration penalty.

Recommendation(s)

1. Member's instructions requested.

Reasons for Recommendations

The Licensing Act 2003 as amended by the Immigration Act 2016 gives Local Authorities additional powers to either suspend or revoke personal licences issued by their Authority if an Immigration penalty has been served upon them. Any decision made by the licensing Sub-committee can be appealed by the licence holder at magistrate's court.

Introduction

1. On the 24th November 2005 Hastings Borough Council issued a personal licence to Saleh Uddin (Issue No. HO20311), such licences were initially valid for ten years. A subsequent amendment contained in the Deregulation Act in April 2015 removed the expiry date and all such licences became life licences unless surrendered.
2. In June 2012 we were notified by Mr Uddin of his change of address to his establishment at 1 King Offa Way, Bexhill on Sea, East Sussex. (Copy of original licence attached Appendix A)
3. The Immigration Act 2016 brought further amendments to the Licensing Act 2003 and on 6th April 2017, Sec 132 was amended to include additional powers to Licensing authorities to revoke or suspend personal licences that were issued by them under the Act.
4. In addition, the amendments under the Act required the holder of a personal licence to notify the licensing authority of the requirement to pay an immigration penalty, including the date on which the penalty was imposed. The notice should include the personal licence or if not practicable a statement of the reasons for failing to supply the licence. Mr Uddin has made no such notification to Hastings Borough Council.
5. In this case Mr Uddin is both the premises licence holder (PLH) and designated premises supervisor (DPS) of the Chilli Tree Asian Cuisine Restaurant.
6. In October 2017 this premise was visited by a Sussex Police Operation targeting the employment of illegal workers, this operation found 3 illegal immigrants. The premise was revisited by Home Office Immigration Service in January 2018 when 2 illegal immigrants were found to be working on the premises.
7. As a result of this information, the premises licence was reviewed and Mr Uddin was issued with an Immigration service Penalty Notice for £10,000. At a Licensing review hearing held on the 29th May 2018, the premises licence for The Chilli Tree Restaurant was revoked. An appeal against this decision has been lodged. (Copy Rother DC hearing record and immigration penalty notice attached Appendix B)
8. The Licensing team were made aware of this result as Mr Uddin is licensed with Hastings Borough Council for his personal licence and a decision was taken to consider action under the amendments to the Licensing Act 2003.
9. A notice of intention to suspend or revoke the personal licence was sent to Mr Uddin on the 11th July 2018. Mr Uddin then had 28 days to make a representation to the Authority about the possible action, he has written two separate letters of reply. (The letter of intention to suspend or revoke and the two replies are attached as appendix C).

Legal Considerations

10. The Licensing Act 2003 is now the only process to issue persons with a personal licence to sell Alcohol.
11. The process of enforcement of those licences has recently been amended by changes brought in by the Immigration Act 2016.
12. The new Sec 132A of the Licensing Act 2003 states, where a licensing Authority has granted a personal licence and it becomes aware that the holder of the licence has been, at any time before or after the grant of the licence been either convicted of any relevant offence or foreign offence or required to pay an immigration penalty, the relevant Authority may either suspend the licence for a period not exceeding 6 months or revoke the licence.
13. A licensing sub-committee hearing must be held to decide the action to be taken.
14. The Department for Culture, Media and Sport has issued guidance under Section 182 of the Licensing Act 2003. This guidance is provided to Licensing Authorities to assist them in carrying out their functions.
15. All members of the Licensing Committee have been supplied with copies of the DCMS Government guidance and the Hastings Borough Council Statement of Licensing Policy.
16. Human rights considerations must be taken into account fully in balancing licensing issues, in particular, Article 1 of the first protocol and Article 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property. Holding a personal licence would be considered a possession. Article 8 relates to the right to respect for private and family life, home and correspondence. These are however qualified rights and can be deprived of "in the public interest". Interference is permissible if what is done:-
 17. Has its basis in law;
 18. Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
 19. Is proportionate to the aims being pursued; and,
 20. Is related to the prevention of crime; or, the protection of public order or health.
21. If members chose to revoke or suspend the licence, the holder has a right of appeal to the Magistrates' Court.

5.0 Options

22. To decide not to suspend or revoke the personal licence, in which case the police must be informed of the decision and they have 14 days in which to make a separate representation.
23. To decide to suspend the licence for a period not exceeding 6 months.

24. To decide to revoke the licence.

25. Members are reminded they must give written reasons for their decision.

Wards Affected

All wards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness

Crime and Fear of Crime (Section 17) Yes

Risk Management

Environmental Issues

Economic/Financial Implications Yes

Human Rights Act Yes

Organisational Consequences

Local People's Views

Anti-Poverty

Additional Information

Appendix A. Copy of existing original licence.

Appendix B. Rother DC hearing notes and copy of Immigration penalty.

Appendix C. Letter of intention to suspend/revoke plus replies.

Officer to Contact

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