

## LICENSING HEARING PANEL

26 APRIL 2022

### LICENSING ACT 2003 APPLICATION FOR REVIEW OF A PREMISES LICENCE

#### BABA FOOD AND WINE, 75 HIGH STREET, GILLINGHAM, KENT ME7 1BJ

Report from: Bhupinder Gill, Assistant Director, Legal and Governance

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#### Summary

In accordance with Section 51 of the Licensing Act 2003, the Council has received an application from Kent Police, as a responsible authority, for a review of the existing premises licence in respect of Baba Food and Wine, 75 High Street, Gillingham, Kent, ME7 1BJ.

All responsible authorities have been consulted in line with the Licensing Act 2003.

Representations in support of the review application have been received from the Director of Public Health.

#### 1. Budget and Policy Framework

- 1.1 Medway Council has published its Statement of Licensing Policy, which it takes into account in the consideration of all applications relating to the Licensing Act 2003.

#### 2 Background to the application and relevant representations

- 2.1 An application for review was received from PC Andre Smuts on behalf of the Chief of the Chief of Police for Kent Police on 1 March 2022 as a responsible authority, in respect of Baba Food and Wine, 75 High Street, Gillingham, Kent. ME7 1BJ. The review relates to the following Licensing Objectives:

Prevention of Crime and Disorder  
Prevention of Public Nuisance  
Protection of Children from Harm

A copy of the application is attached at **Appendix A**.

- 2.2 The premises are currently operated by way of a premises licence granted in accordance with the Licensing Act 2003, a copy of which is attached at **Appendix B**.
- 2.3 The application has been correctly advertised by way of the display of notices at the premises and on the Council's website for the required period, in accordance with regulations made under the Licensing Act 2003. Also, in accordance with the legislation, notice of the application (and the application itself) was served on the licence holder and the other responsible authorities. Before determining the review application, the Council, as licensing authority, must hold a hearing to consider it and any relevant representations received.

### 3 Advice and analysis on determination of review application

- 3.1 At the panel hearing, Members must, having regard to the review application and the relevant representations received, take any of the following steps considered necessary to promote the licensing objectives of the Act:-
- (a) 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;
  - (b) 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);
  - (c) remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
  - (d) suspend the licence for a period not exceeding three months;
  - (e) revoke the licence.
- 3.2 Paragraph 11.16 – 11.18 of the revised guidance issued by the Home Office in March 2015 under Section 182 of the Licensing Act 2003 states "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. 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. 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."

### 4. Promotion of Licensing Objectives

- 4.1 The licensee is expected to demonstrate that they deal with and understand the promotion of the four licensing objectives.

4.2 The four licensing objectives are:

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

## 5. Relevant Representations

5.1 The licensing authority must take into account any relevant representations made.

5.2 Following the advertising of the review application, representations have been received from the Director of Public Health on 23 March, this is attached as **Appendix C** with supporting evidence at **Appendix D**.

5.3 On 29 March 2022 Licensing received supplementary evidence from Kent Police following an incident that took place on 22 March 2022. Paperwork for this submission can be found at **Appendix E**, and a statement from PC Hunt can be found at **Appendix F**. This supplementary evidence was served on the Licensee by PC Hunt on 30 March.

## 6. Policy and Legal Considerations

6.1 Medway Council has published its Statement of Licensing Policy, which it will consider alongside the amended Guidance issued by the Home Office under section 182 of the Licensing Act 2003 in all applications.

6.2 In determining this application, Members may wish to consider information contained in Appendix 7 (page 146) of the Statement of Licensing Policy that lists examples of good practice against the four licensing objectives as well as Chapters 9 and 10 of the amended Guidance.

6.3 The steps that the licensing authority may consider taking are:

- The modification of the conditions of the premises licence;
- The exclusion of licensable activities from the scope of the licence;
- The removal of the designated premises supervisor from the licence;
- The suspension of the licence;
- The revocation the licence.

6.4 Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place. Further examples of possible licensing conditions, including those aimed at tackling crime and disorder, can be found in the amended guidance issued under section 182 of the 2003 Act.

## 7 Risk Management

- 7.1 The Council has to consider and determine this application, which is a function relating to licensing and registration as set out in Schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005 and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees, in accordance with the law (both statutory and case law), relevant statutory guidance and statements of policy.

## 8 Financial and legal implications

- 8.1 There are no direct financial requirements at this time.
- 8.2 This hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005 (as amended).
- 8.3 There is the possibility of a challenge by way of appeal to the decision by either the applicant or objector. Legal advice will be given to members as appropriate at the hearing. However, whatever the decision of the panel members, this must be based on the evidence placed before it and the panel must decide what weight to attribute to this information.

## 9. Recommendations

- 9.1 That the Licensing Hearing Panel, having regard to Licensing Act 2003, the statutory guidance issued under S182 of the Act, the Council's Statement of Licensing Policy and all matters before it, both written and oral, considers and determines this application to review the premises licence. The steps that the licensing authority may consider taking are outlined in paragraph 6.3.

## Lead officer contact

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## Appendices

Appendix A – Kent Police Application for Review  
Appendix B – Copy of Premises Licence  
Appendix C – Public Health Team representation  
Appendix D – Public Health Supporting Evidence  
Appendix E – Supplementary information submission request  
Appendix F – Statement from PC Hunt re supplementary information

## **Exempt Appendix G – CCTV stills from incident on 22 March**

## Background papers

None