



1. Application

2. Current licensable activities and hours under Premises licence M014294

Playing of recorded music							
Indoors/Outdoors or both			Indoors		Outdoors	Both	
Day	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Start	07.00	07.00	07.00	07.00	07.00	07.00	07.00
End	23.00	23.00	23.00	23.00	23.00	01.00	23.00
Late Night Refreshment							

On/Off or both			On		Off		Both	
Day	Mon	Tues	Wed	Thurs	Fri		Sat	Sun
Start							23.00	
End							01.00	

3. Conditions

Operating Schedule

The conditons attached to the licence are shown in the following Appendixes-

- Appendix 1 – Mandatory Conditions
- Appendix 4 – Conditions consistent with the Operating Schedule

The licence is attached at **Appendix 3**.

4. Grounds for Review

Licensing Objective

1. Prevention of Crime and Disorder

Immigration Compliance and Enforcement Officers of the Home Office discovered disqualified persons working illegally on the premises.

The Licensing Authority accepted an application for the Review of the premises licence in respect of Mirra, 98 High Street, Colchester made by Essex Police and convened a Hearing for 19 August 2019.

At the Hearing, the respondent's legal advisor, Mr Dadds, presented the Sub-Committee with documentation in relation to the identification of the persons found on the premises at the time of the visit by Immigration Officers on 14 June 2019. Mr Dadds requested that the Hearing be adjourned pending the outcome of the Immigration Enforcement Investigation that was currently underway.

The Sub-Committee, having retired to consider the additional information provided, made the following determination -

The Sub Committee has carefully considered your application that the hearing be adjourned for a period of four weeks. The Sub Committee is very disappointed that the further information was not made available before today, notwithstanding the correspondence. Whilst we know the issue of civil penalty or prosecution does not preclude the Sub-Committee hearing the application, in light of the fact that the respondent licensee has asserted this morning that the employees were entitled to work, to his knowledge, this would be a relevant consideration for the determination of the application. The Sub Committee at this stage would wish to know the views of the Home Office in respect of the documentation. However, the Sub Committee will hear the matter on the 20 September whether the outcome is received or not.

The application for a review of this premises licence by Essex Police and the background information to evidence the reasons why it believes such a review is necessary is attached as **Appendix 1** of this report.

The evidence submitted by Mr Dadd's on behalf of the respondent is attached at **Appendix 2** of this report.

4. Policy Context

Policy references are given for guidance only, they should not be regarded as a substitute for the Policy which contains the necessary detail for all parties in making and determining applications

Reviews

13.9 The review of a licensed premises is the key protection for residents and businesses where one or more of the licensing objectives are being undermined and these problems can be linked to the operation of a licensed premises. A responsible authority or any other body can ask for the review of a licence.

13.10 When considering a review request, or other possible enforcement action, the Licensing Authority will consider all relevant matters and in particular –

- The use of the premises for criminal activities such as the supply of drugs or money laundering
- Failure to promptly respond to a warning given by a responsible authority
- Failure to engage with the responsible authorities in an effective manner
- Previous convictions for licensing offences
- Previous failure to comply with licence conditions

13.11 The Licensing Authority will not normally engage its role as a responsible authority by calling reviews on behalf of other persons, such as local residents or community groups. These individuals are entitled to do so in their own right where there are sufficient grounds to do so.

13.12 Where responsible authorities have concerns about problems identified at a premises, the Licensing Authority considers it to be good practice for them to give the licence holder early warning of their concerns and the need for improvement. Where possible and/or appropriate it would be expected that advice and guidance in addressing the issue(s) should be given, such as using an Improvement Plan before bringing the premises to review. Responsible authorities may seek to amend a licence via review where evidence indicates the need for permanent enforceable conditions to be added to a licence.

13.13 It should be noted that a review can be called without an early warning where a serious situation has occurred and immediate action is required. Where premises are associated with serious crime and/or disorder a senior Police officer may apply for a summary review of a premises licence.

13.14 The outcome of a review hearing will not ordinarily have effect until such time as the period given for appealing (normally 21 days) expires or an appeal is disposed of.

5. Crime and Disorder Act 1998

The Council is required to have regard to the wider legislative context arising from Section 17 of the Crime and Disorder Act 1998 which provides that –

Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applied to exercise its various functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can to prevent –

- crime and disorder in its area (including antisocial and other behaviour adversely affecting the local environment); and
- the misuse of drugs, alcohol and other substances in its area; and
- re-offending in its area.

6. Section 182 Statutory Guidance

The following paragraphs of the Section 182 Statutory Guidance issued by the Secretary of State are relevant to this application.

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the 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 objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

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 the 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.

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

7. Options available to the Sub-Committee

The Sub-Committee must take such of the following steps as it considers appropriate to ensure the promotion of the licensing objectives –

- Modify the conditions of the premises licence
- Exclude a licensable activity from the licence
- Remove the Designated Premises Supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence

Appendixes

Appendix 1	Application
Appendix 2	Respondent's Evidence
Appendix 3	Premises Licence

Report Author

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