

## Slough Borough Council

<b>Report To:</b>	Licensing Sub-Committee
<b>Date:</b>	02 October 2023
<b>Subject:</b>	Premises Licence Review - Baylis House, Stoke Poges Lane, Slough
<b>Chief Officer:</b>	Ketan Gandhi, Associate Director Community & Public Protection
<b>Contact Officer:</b>	Melanie Sagar Principal Licensing Officer
<b>Ward(s):</b>	Baylis and Salt Hill
<b>Exempt:</b>	NO - Part 1
<b>Appendices:</b>	Appendix A – Review application form Appendix B – TVP licensed premises incident report dated 17/03/23 Appendix C - TVP licensed premises incident report dated 14/04/23 Appendix D - TVP licensed premises incident report dated 24/06/23 Appendix E - TVP licensed premises incident report dated 07/07/23 Appendix F - TVP licensed premises incident report dated 18/07/23 Appendix G – Witness Statement of Jonathan Mark Stanley dated 07/08/23 Appendix H – TVP appointment letter to Kulwant Singh Kaneja dated 07/08/23 Appendix I – TVP appointment letter to Golden City Management Ltd dated 07/08/23 Appendix J – Premises licence Appendix K – Email from Debie Pearmain confirming premises licence holder and DPS will be posted a copy of the review application dated 07/08/23

### 1. Summary and Recommendations

- 1.1 This report sets out Thames Valley Police's grounds to review the premise licence for Baylis House, Stoke Poges Lane. The review application has been made pursuant to section 51 of the Licensing Act 2003 ("the Licensing Act"). Under Section 52 of the Licensing Act, *'before determining the application, the authority must hold a hearing to consider it and any relevant representations.'*

#### Consultation:

- 1.2 As per section 51 (3) of the Licensing Act, the review application was subject to the following advertising:
- published on Slough Borough Council's website

- a public notice placed at the window of the premises in question
- responsible authorities and Ward Members notified of the Application

1.3 The closing date for review representations was 04 September 2023. No representations in favour of the review were received.

Under the Council's Statement of Licensing Policy 2014-2019 ("the Council's Policy"), the Delegation of Functions an application to review premises licence/club premises certificate is dealt with by the Sub Committee. Under Appendix C – Glossary of the Council's Policy, the Licensing Sub-Committee is *defined as 'the Full Licensing Committee delegate a number their functions to one or more 'Licensing Sub-Committees'. These are made up of three members of the Full Licensing Committee.'*

### **Recommendations:**

The Sub-Committee is recommended to:

Having had regard to the representations made by all parties, the Sub-Committee must consider appropriate action for the promotion of the licensing objectives.

Where the Sub-Committee considers action is appropriate the statutory options available are:

- (a) Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition).
- (b) Exclude a licensable activity from the scope of the licence.
- (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.

**Reason:** The Licensing Team cannot disregard or overturn a decision made by the Licensing Sub Committee.

## **2. Report**

### **Introductory paragraph**

- 2.1 As quasi-judicial body the Sub-Committee is required to consider this matter on its merits and must act reasonably and rationally. The Sub Committee can only consider relevant factors and must ignore irrelevant factors. The decision must be based on evidence, which logically shows the existence or non-existence of the relevant facts, or the likelihood or the unlikelihood of some future event, the occurrence of which would be relevant. The Sub Committee must give fair consideration to the contentions of all persons entitled to make representation to them.
- 2.2 The Sub-Committee can only consider matters within the report.
- 2.3 Members should note that the Sub-Committee is meeting on this occasion solely to perform the role of Licensing Authority. As such Members should disregard the

Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the Council's related policies and guidance.

- 2.4 Members will be aware of the Council's Code of Conduct which requires them to declare interests. The Code applies to members when considering licensing issues. In addition, as a quasi-judicial body, Members are required to avoid both actual bias and the appearance of bias.

### **Options considered**

- 2.5 Consideration has been given to how the decision sought will help the Council meets its vision and corporate priorities, however the nature of the review application is outside the scope of these priorities.

### **Background**

- 2.6 On 07 August 2023, Thames Valley Police submitted a review application for Baylis House, Stoke Poges Lane Berkshire, SL1 3PB, (Premises Licence Number: PL4603). The review application is on the grounds that the following licensing objectives are not being met.

- The prevention of crime and disorder
- Public safety
- The protection of children from harm

- 2.6.1 The full review application is attached at appendix A and the application can be summarised as follows.

2.6.2 17 March 2023 – Joint TVP and Licensing Operation to attended hotel to meet the new DPS. Incident report attached at appendix B.

2.6.3 14 April 2023 – Meeting arranged to meet the new hotel owners. Meeting notes are attached at appendix C.

2.6.4 25 April 2023 – TVP officers attended Baylis House Hotel to present CSE training to staff members.

2.6.5 24 June 2023 – Incident report attached at appendix D.

2.6.6 07 July 2023 – Meeting arranged with hotel owners, management and DPS to discuss the allegation detailed in appendix D. Meeting notes are attached at appendix E.

2.6.7 18 July 2023 – Meeting arranged to advise the hotel owners, management and DPS that TVP will be reviewing the premises licence. Meeting notes are attached at appendix F.

2.6.8 07 August 2023 – Witness statement from Inspector 3607 Jonathan Stanley in support of the review application. Witness statement attached at appendix G.

2.6.9 07 August 2023 – Letter sent to hotel owners and DPS separately informing them that a review application had been made. Copies of the letters are attached at appendix H and appendix I.

2.6.10 No representations in respect of this review were received during the statutory 28-day consultation period.

### **3. Implications of the Recommendation**

#### **3.1 Financial implications**

3.1.1 There are no financial implications to the Council.

#### **3.2 Legal implications**

3.2.1 The Licensing Authority is required to hold a hearing to consider the review application and any relevant representations made. The hearing must be held in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

3.2.2 An application for review of a premises licence may be made pursuant to section 51 of the Licensing Act 2003.

3.2.3 The Licensing Sub-Committee is required to give appropriate weight to the review application, representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps (if any) that are appropriate to promote the four licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

3.2.4 Members should note that each objective is of equal importance.

3.2.5 Having considered those relevant matters, the Licensing Sub-Committee can take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives: Under Paragraph 11.19 of the Revised Guidance under Section 182 of the Licensing Act 2003, the options available to the Licensing Sub-Committee in a review application are the following:

(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.

3.2.6 If the Sub-Committee takes a step mentioned in (a) or (b) above, it can specify that the modification or exclusion is to have effect for a period up to three months if it considers this to be appropriate.

3.2.7 It should be noted that:

- (a) clear reasons must be given for the decision; and
- (b) any additional or modified conditions should be practicable and enforceable.

3.2.8 The applicant for the review, the premises licence holder and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in schedule 5 to the Licensing Act 2003.

3.2.9 In addition to determining the application in accordance with the legislation, Members must have regard to the:

- (a) common law rules of natural justice (i.e. ensuring a fair and unbiased hearing etc.).
- (b) provisions of the Human Rights Act 1998;
- (c) considerations in section 17 of the Crime and Disorder Act 1998.

3.2.10 The Sub-Committee must also act appropriately with regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms implemented under the Human Rights Act 1998, particularly articles 6 (relating to the right to a fair trial); article 8 (protection of private and family life); and article 1 of the First Protocol (protection of property).

3.2.11 The Sub-Committee must also consider section 17 of the Crime and Disorder Act 1998 which states:

'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.'

3.2.12 The Sub-Committee must have regard to the amended Secretary of States guidance issued in April 2018 under Section 182 of the Licensing Act 2003 and in particular, Chapters 9 (Determining applications) and 10 (Conditions attached to Premises Licences). Particular regard should be had to paragraphs 9.31 – 9.41 (Hearings) and 9.42 – 9.44 (Determining actions that are appropriate for the promotion of the licensing objectives).

3.2.13 With regards to Relevant, Frivolous or Vexatious Representations the relevant sections of the Section 182 Guidance state the following:

**9.4** *A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement*

*for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.*

*9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.*

*9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub- committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.*

*9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.*

*9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them.*

3.2.14 The sub-committee must also have regard to the Council's Statement of Licensing Policy 2014-2019 ("the Council's Policy").

3.2.15 Slough Borough Council adopted the Yellow and Red Card' scheme to licensing review applications as per the consideration given by Department for Culture Media and Sport (DCMS) to all Chief Executives of Local Authorities. As per section 5.42 of the Council's Policy

*'Briefly the 'Yellow and Red Card' scheme can be invoked by the Licensing Sub Committee on the first occasion where a review application has been made to –*

- Impose stringent new conditions on the licence*
- Use the powers available as contained with the Section 182 Guidance for reviews, and*
- Imposition of a licence condition requiring the premises to display a visible notice at the premises detailing the outcome of that review and the warning has been given. This would be deemed to be a 'Yellow Card'.*

*The recommended wording for the 'Warning' to be displayed at the premises, as approved by Slough Borough Council's Legal Services and Thames Valley Police should be – The Licensing Sub Committee have issued a 'Yellow Card' to the licensed*

*premises as a warning that if a further Review is necessary and matters have not improved the Premises Licence may be revoked. ‘*

### **3.3 Risk management implications**

3.3.1 Consideration has given to risk management implications however the nature of the decision is outside the scope of these priorities.

### **3.4 Environmental implications**

3.4.1 Consideration has given to environmental implications however the nature of the decision is outside the scope of these priorities.

### **3.5 Equality implications**

3.5.1 The Sub-Committee should be aware of and consider any implications that may arise from the Human Rights Act 1998 and section 149 Equality Act 2010. The legislation makes it unlawful for a public authority to act in a manner which is incompatible with the European Convention of Human Rights.

3.5.2 When determining the case and considering imposition of conditions the Sub-Committee must be satisfied that any decision which interferes with the rights of the applicant or of others, only does so insofar as it is necessary to protect the rights of others and that no alternative decision would be appropriate.

3.5.3 The Sub-Committee is specifically referred to the following Convention rights:

- (i) Article 6 (the right to a fair trial),
- (ii) Article 8 (the right to respect for private and family life)
- (iii) Article 1 of the First Protocol (the protection of property)

## **4. Background Papers**

- [The Licensing Act 2003](#)
- [Revised guidance issued under Section 182 of the Licensing Act 2003 \(2023\)](#)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- [Slough Borough Council Statement of Licensing Policy – January 2019-2024](#)