



**LICENSING AUTHORITY: SWALE BOROUGH COUNCIL
LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

**NOTICE OF DETERMINATION
REVIEW**

Applicant: PC Guise on behalf of Kent Police

Premises Londis Iwade (Nisa), 3 School Mews, Iwade,
Sittingbourne, Kent ME9 8UW

Date(s) of hearing: 23 February 2023

Date of determination: 23 February 2023

Committee Members: Councillor Mike Whiting (Chair)
Councillor Carole Jackson
Councillor Lee McCall

Legal Advisor in attendance: Helen Ward, Lawyer (Contentious), MKLS

Licensing Officer in attendance: Johanna Thomas

Licensing Team Leader in attendance: Chris Hills

Democratic Services Officer in attendance: Kellie MacKenzie

This was an application for:

Review

of a

Premises Licence

A: Representations, evidence and submissions:

The Sub-Committee considered the representations, evidence and submissions of the following parties:

Applicant

Kent Police, PC Daniel Hunt and PC Alexander Guise

Legal or other representative: None

Responsible Authorities

None

Interested Parties

None

Premises Licence Holder

Mr Arudchelvam Uthayanam, Company Director of Trio Management Ltd and Designated Premises Supervisor .

Legal or other representative: Mr Richard Baker and Professor Roy Light

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Swale Borough Council

The Sub-Committee has taken into account specifically the following provisions of the Licensing Act 2003 and the Regulations thereto:

Sections 51

The Sub-Committee has taken into account the following provisions of the Guidance under section 182 of the Licensing Act 2003:

Chapter 2 which relates to the licensing objectives
Chapter 10 which relates to conditions attached to licences;
Chapter 11 which relates to reviews.

The Sub-Committee has taken into account its Statement of Licensing Policy.

C: Determination:

The Sub-Committee has decided:

1. To remove the Designated Premises Supervisor
2. To amend and add conditions as set out below
 - i. To amend the existing condition 1 (c) so that it reads *Any recording shall be retained and stored in a suitable and secure manner for a minimum of three calendar months and shall be available to the Police or Officers of the Licensing Authority on reasonable request. Any updates to the CCTV to ensure compliance with this condition will be completed within 2 months of the date of this decision.*
 - ii. To add a new condition which reads *No staff member, including those provisionally employed as trainees, will be allowed to start work in the store (1) without providing full documentation to enable inclusion by the company accountant on the payroll and (2) until receipt is acknowledged from the company accountant that the person has been entered on the company payroll. In addition to the legislative requirements (seeing original documents, checking they are valid in the presence of the applicant and making and keeping dated copies) the premises licence holder will confirm the applicant's status on the government's right to work website and will keep a dated copy with the employee's work records.*
 - iii. To add a new condition which reads: *The Designated Premises Supervisor will take and pass an approved BIIAB Designated Premises Supervisor course or equivalent either prior to or as soon as practicable after being specified as DPS on the premises licence. The Police and Licensing Authority will be advised by email of the date of the course.*
 - iv. To add a new condition which reads: *Save for in exceptional circumstances a member of staff who holds a personal licence will be on duty whenever a trainee is working at the premises and the premises is open for the sale of alcohol.*

Reasons for determination, considering each of the licensing objectives in turn:

■ **Prevention of Crime and Disorder**

Reasons (state in full):

The Licensing Sub Committee carefully considered the evidence provided and the submissions made at the hearing. The Licensing Sub Committee noted that the Police and Premises Licence Holder, along with the representatives, had met prior to the hearing and agreed the removal of the DPS and amendment to the conditions as an appropriate way to deal with the review. The Premises Licence Holder's representative outlined the changes to the conditions and some discussion was had to ensure that they were clear and capable of enforcement. These are conditions i to iii as set out above. The Police confirmed they were no longer seeking revocation.

Nonetheless, the Licensing Sub Committee recognised the Guidance that in matters such as this revocation should be seriously considered. They did however consider revocation would be a disproportionate step at this stage, given that this was the first time the premises had been reviewed, the nature of the allegations and impact of them on the licensing objectives.

The Licensing Sub Committee welcomed the partnership working between the parties to the review. On hearing the evidence, however they were concerned that members of staff with very little experience had been left to work alone. They were also concerned that these members of staff appeared to have had insufficient training in matters relating to licensing, as required by the premises licence conditions.

The Licensing Sub Committee were disappointed that training records for staff had not been provided however the Premises Licence Holder indicated that these were all in place and had been produced with assistance from his representative at the hearing.

The Licensing Sub Committee welcomed the commitments the premises licence holder had made in both committing to training for all staff, additional training for any Designated Premises Supervisor (which had been offered as a condition) and for Mr Uthayanam to remove himself as DPS to allow another staff member who worked more frequently at the premises to take on the role.

The Licensing Sub Committee were disappointed with the lack of contact between the Police and Mr Uthayanam following the visit by immigration officers and they believed that changing the DPS would improve contact in the future.

The Licensing Sub Committee recognised the seriousness of the allegations regarding illegal working. They agreed that the facts of this were yet to be determined and the decision for them was regarding the appropriate and proportionate steps to be taken to ensure promotion of the licensing objectives. As such they welcomed the agreement reached with the police and believed an additional condition to ensure supervision of trainees was required to ensure the prevention of crime and disorder and improve the failings in management at the premises that had been evidenced in the review. On considering submissions from the police and the premises licence holder, the additional condition requiring a personal licence holder to be on duty was limited to those times when trainees were working in the store.

■ **Public Safety**

Reasons (state in full):

The Licensing Sub Committee noted that the review engaged this licensing objective however they did not feel that any intervention was appropriate for the purposes of promoting the licensing objective, nor would it be proportionate to the decision being made.

■ **Prevention of public nuisance**

Reasons (state in full):

There were no representations relating to this licensing objective.

■ **Protection of children from harm**

Reasons (state in full):

There were no representations relating to this licensing objective.

D: Appeal

Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the Licensing Act 2003.

An appeal has to be commenced by the giving of a notice of appeal to the Magistrates' Court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against. Parties should be aware that the Magistrates' Court may make an Order as to costs in any Appeal.

PRINT NAME (CHAIR): *MIKE WHITING*

Signed [Chair]:

A copy of the original document is held on file

Date:

23/2/23



