

This report will be made public on 4 February 2022



Report Number **DCL/21/49**

To: Licensing Sub-Committee
Date: 14 February 2022
Status: Non-Executive Decision
Head of service: Ewan Green, Head of Place

SUBJECT: An application for a Review of a Premises Licence in respect of:
Palmarsh Garage

SUMMARY: This report outlines the application made by Home Office - Immigration Enforcement, for a Review of the Premises Licence at a Petrol Garage in Palmarsh following enforcement action taken by them. The Licensing Sub-Committee must determine the outcome for the application.

REASONS FOR DETERMINATION:

The Committee is asked to consider the Review application for the Premises Licence. When considering the application the Committee must ensure they fully promote the licensing objectives. The Committee is obliged to have regard to the revised national section 182 guidance and the council's own licensing policy.

DETERMINATION:

The Licensing Sub-Committee is asked to:

- 1. Note the contents of Report DCL/21/49.**
- 2. Determine the application. The options for determining the application are set out in section 5.**

1. BACKGROUND

- 1.1 The Licensing Act 2003 provides that the sale or supply of alcohol on and off the premises and other licensable activities must be authorised by a premises licence.

A premises licence holder must comply with the four licensing objectives:

- The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 1.2 The premises at Palmarsh Garage, Dymchurch Road, Palmarsh, Kent CT21 4ND has held a licence since 2008. The previous Premises Licence holder and Designated Premises Supervisor was Mr Arunthavarajah Suntharalingham. He left the premises in September 2020, unfortunately the licence was not correctly transferred to us until recently but the new owner, Mr Hyat Sultan, has been managing the premises since September 2020 and has very recently applied for Mrs Fredia Hayat to be the DPS (yet to be processed). A copy of the current licence can be found at Appendix 1.

2. APPLICATION

- 2.1 An application to Review the Premises Licence has been received from the Home Office – Immigration Enforcement. The application and accompanying witness statements can be found at Appendix 2.
- 2.2. The application sets out the enforcement action taken by the Home Office on the 5th August 2021 having received intelligence that illegal working was taking place at Palmarsh Garage.
- 2.3. Upon entry by Immigration Officers, there was no employee present serving customers. From speaking with a customer filling up their car on the forecourt she stated that the sole employee had run off upon seeing their approach and therefore was believed to have been working illegally at the premise.
- 2.4. Leaving a licensed premises open and unattended where children could enter and obtain alcohol is a serious breach of the licensing objective to protect children from harm.
- 2.5. Due to the identity of the employee being unclear the Home Office were unable to take further action against the employee.

3. IMMIGRATION INFORMATION

- 3.1 The employment of people who do not have the right to work in the UK is a serious crime and can be linked to the exploitation of vulnerable people.
- 3.2 Employing people without making the legally required checks demonstrates that the premises licence holder is not robust and does not take his responsibilities or the licensing objectives seriously.
- 3.3 Working illegally is a criminal offence and on conviction an illegal worker may receive a custodial sentence of up to 6 months and an unlimited fine.
- 3.4 An employer who employs an illegal worker may be liable for a civil penalty of up to £20,000 per illegal worker and an employer who knowingly or has reasonable cause to believe that employment is not permitted, may on conviction after indictment, be subject to a custodial sentence of up to five years, and an unlimited fine.
- 3.5 The Home Office (Immigration Enforcement) have submitted this application to Review the premises licence due to the significant risk that the licensing objective of preventing crime and disorder is being undermined.
- 3.6 The Immigration Act 2016 brought in amendments to the Licensing Act 2003 relating to illegal working. Under Schedule 4, Section 5 it states that a premises licence may be revoked if considered appropriate for the promotion of the crime prevention objective, in order to prevent illegal working.
- 3.7 The Home Office Guidance issued under section 182 of the Licensing Act 2003 states: 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.

4. RELEVANT REPRESENTATIONS

- 4.1. This Hearing has been required by the Licensing Act 2003 because the Review application was made by a Responsible Authority. No other representations were submitted.

Responsible Authority	Comments
Home Office - Immigration	Review application submitted
Kent Police	None
Environmental Health (Pollution)	None

Environmental Health (Commercial)	None
Kent Fire and Rescue	None
Planning	None
Child Protection Agency	None

The application can be found in Appendix 2.

5. OPTIONS

5.1. The Licensing Sub-Committee has the following options:

- a) Take no action against the Premises Licence
- b) Issue an informal warning letter
- c) Add conditions to the Licence
- d) Exclude a licensable activity
- e) Remove the DPS
- f) Suspend the Licence for a period up to 3 months
- g) Revoke the Licence

5.2. The Committee is asked to note that it may not add conditions or revoke the licence merely because it considers it desirable to do so. The Committee must only consider evidence that relates to the 4 Licensing Objectives. Any conditions added must promote the Licensing Objectives.

6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Briony Williamson, Licensing Specialist
 Telephone: 01303 853475
 Email: briony.williamson@folkestone-hythe.gov.uk

Background documents:

Current Licensing Policy is available under the Policies section of the website:

<https://www.folkestone-hythe.gov.uk/your-council/policies-plans-and-documents/policy-documents>

The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available at:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

The Immigration Act 2016 can be read here:

http://www.legislation.gov.uk/ukpga/2016/19/pdfs/ukpga_20160019_en.pdf

The Committee members are advised to read the new guidance thoroughly. Your attention is drawn to paragraphs 9.42, 9.43 and 9.44 in respect of the determination of the application. Additionally members are advised to refer to section 10 about imposing conditions. It is also good practice that if they propose to apply conditions they should be discussed with the applicant prior to the determination to ensure that they are proportionate.

7. APPENDICES

Appendix 1. Current Premises Licence

Appendix 2. Review Application Form & Witness Statements