



Reigate & Banstead
BOROUGH COUNCIL
Banstead | Horley | Redhill | Reigate

REPORT OF:	HEAD OF PLANNING AND REGULATORY SERVICES
AUTHOR:	PAUL MOREY
TELEPHONE:	01737 276446
E-MAIL:	Paul.Morey@reigate-banstead.gov.uk
TO:	LICENSING & REGULATORY SUB COMMITTEE
DATE:	TUESDAY 19 MARCH 2024

AGENDA ITEM NO:	5	WARD(S) AFFECTED:	REIGATE
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SUBJECT:	APPLICATION UNDER SECTION 53A OF THE LICENSING ACT 2003 FOR A REVIEW OF THE PREMISES LICENCE FOR CLOONY'S COCKTAIL BAR & SHISHA 85 BELL STREET REIGATE.
PURPOSE OF THE REPORT:	TO DETERMINE THE APPLICATION FOR THE REVIEW

OPTIONS

The Sub-Committee has the following options:

1. **Modify the conditions of the premises licence;**
2. **Exclude a licensable activity from the scope of the licence;**
3. **Remove the designated premises supervisor from the licence;**
4. **Suspend the licence for a period not exceeding three months;**
5. **Revoke the licence.**

The Sub Committee has authority to determine the above options.

Background

1. 85 Bell Street Reigate Surrey RH2 7AN was previously licensed and ran as 'Joules' under Premise Licence 20/01693/LAPREM which was surrendered on 24.05.23.
2. Under new management a new application was made for a Premise License which was granted on 18 August 2023 to Mr Suraj Chopra of Flat 10, Millais House, 123 Bridge Road, Chessington, Surrey, KT9 2RT. Following a refit and Mr Chopra gaining a Personal Licence, Premise Licence 23/02734/LICDPS was issued on 11 October 2023. The Premises operates as Cloony's Cocktail Bar & Shisha, a copy of the licence and site map are at **Annex A**.

3. Since October 2023 when the premises opened, there has been three complaints of noise nuisance received by Reigate & Banstead Environmental Health Environmental Protection team (EP), which they investigated. As a result their investigations, EP served an Abatement Notice in Respect of Statutory Nuisance (24/00016/EPSNA) on 11 January 2024. The notice was served on the premises licence holder Mr Suraj Chopra, a copy of which and covering letter is at **Annex B**.
4. On 17 January 2024 Reigate & Banstead Licensing Officers arranged a meeting for all interested parties at the premises. During the meeting, the complainants put their views forward regarding the problems they were experiencing. Mr Chopra was also given general advice by EP regarding measures to reducing noise nuisance. A number of immediate measures were agreed to mitigate the noise nuisance including restricting the use of the rear garden.
5. A further visit was conducted on the evening of 18 January 2024 by EP and Licensing officers to provide advice regarding suitable sound levels for music in the premises with respect to the Abatement notice served on 11 January.
6. As a result of routine checks by EP officers, a breach in respect of the notice (24/00016/EPSNA) was noted. In response to this EP, made an application under the Licensing Act 2003 Section 51(1) for a review of the premises licence 23/02734/LIDPS on 01 February 2024. A copy of the Review Application is at **Annex C**.
7. Since the meeting EP has had an ongoing discussion with Mr Chopra to address the issues at the premises. The initial action points agreed have been found to improve the situation, and EP and Mr Chopra have agreed these form a suitable foundation for conditions to be added to the licence. For the committee's consideration during their deliberations, a copy of the suggested conditions are at **Annex D**.

Application Summary

8. The Environmental Health department had received three formal complaints concerning noise nuisance from Cloony's Bar at 85 Bell Street, Reigate. The complaints involve shouting, loud music, and excessive music volume. After thorough investigations and warnings to the premises licence holder about the noise issues, Environmental Health issued a noise abatement notice on January 11, 2024, under Part III of the Environmental Protection Act 1990. The notice was breached. The application sighted that the noise, particularly music and lyrics, was clearly audible inside residents' properties and communal areas. The music noise and disturbance from the licensed premises is having a disproportionate and unreasonable effect on persons living in the area which demonstrates that the premises licence holder was not promoting the licensing objective regarding the prevention of public nuisance.

Relevant Representations from other Responsible Authorities:

9. Surrey Police Licensing have made a representation following several breaches of licence conditions. The grounds for the representation were based on a warning letter previously written to Mr Chopra. It outlined an incident involving the sale of alcohol to an inebriated person. This led to an assault on a member of staff and subsequent assaults on police officers who attended the location. It also spoke to an initial failure to install an electronic ID reader in line with conditions. The Police

have requested the replacement of the DPS on the grounds of prevention of crime and disorder. The Licence holder has been supplied with copies of this information attached to the report at **Annex E (1,2&3)**.

Relevant Representations from interested parties.

10. A total of two (2) valid representations have been received from interested parties in respect of this application. They centre on the nuisance that has resulted due to noise from the premises and patrons using the rear garden and are relevant under the prevention of public nuisance. Copies of these Representations are at **Annex F**.

Policy Considerations

11. Relevant to this application is the Council's Statement of Licensing Policy. In particular section 5: Fundamental Principles; and sections 6 and 8 which refer to the Licensing objectives relating to crime and disorder and the prevention of public nuisance.

Legal Considerations relating to the Review Application:

The licensing objectives

12. Whilst carrying out its statutory duties, the Licensing Authority must promote the following four Licensing Objectives: -

- (a) The Prevention of Crime and Disorder;
- (b) Public Safety;
- (c) The Prevention of Public Nuisance; and
- (d) The Protection of Children from Harm.

13. The Licensing Objectives are the only matters to be taken into account when determining applications and any conditions to be attached must be 'appropriate' to achieve those objectives.

14. Any matters arising during the hearing that cannot be linked to one of the licensing objectives will not be taken into account by the Sub-Committee.

Statement of licensing policy/guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 – General

15. The Licensing Authority must have regard to its Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003 when considering applications.

16. The Policy and Guidance makes it clear that the Licensing Authority's role is to hold a balance between the needs of the licensing, entertainment and food industry and the needs of residents and other users of the Council including businesses, workers, shoppers, and visitors.

17. The Licensing Authority also recognises the need to avoid as far as possible duplication with other regulatory regimes, and therefore will not seek to impose restrictions that are already requirements under other Statutes.
18. The Council's policy does not make any predetermined presumptions about licensed premises and their associated applications based on the area in which they are located. Each application will always be considered on its own merits based on the steps required to ensure the Licensing Objectives are met.
19. If the Sub Committee does choose to depart from its policy and/or Section 182 Guidance, it must have heard compelling and exceptional reasons during the Hearing.

Licensing Act 2003 – the statutory options – review hearings

20. Section 52(2) of the Licensing Act 2003 provides: - The authority must, hold a hearing to consider the application for the review and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.
21. The steps are listed at the top of this report under the heading of "Options" but are repeated below for the sake of completeness in respect of the legal considerations:

(4) The steps are –

- a. To modify the conditions of the licence;
- b. To exclude a licensable activity from the scope of the licence;
- c. To remove the designated premises supervisor;
- d. To suspend the licence for a period not exceeding three months;
- e. To revoke the licence;

And for this purpose, the conditions of the licence are modified if any of them is altered or omitted, or any new condition is added.

Sub Committee Options

22. The Sub Committee therefore has the following options:

Modification of Conditions

Members may choose to impose new or amend existing conditions based on the evidence laid before them.

It is possible to impose their own conditions, over and above that requested by a relevant party but, if so, Members should be satisfied that the Licensee and other interested parties had the opportunity to express their views on the proposed conditions before making such a decision.

To Exclude a Licensable Activity from the Scope of the Licence

In this case, the option to remove the sale of alcohol would be paramount to revocation, as the sale of alcohol is integral to these premises. Other licensable activities could also be excluded.

Removal Of Designated Premises Supervisor

Members would have to be satisfied that the cause of the problems were solely down to the actions of the Designated Premises Supervisor and that person remaining in that role would continue to undermine the Licensing Objectives.

Suspension of Licence

Suspension of the Premises Licence should only be used if it is considered that a period of time is required to put steps in place to ensure that the Licensing Objectives will be met after the suspension period.

Suspension should not be used as punishment as this is not something that would be based on promoting the Licensing Objectives. Punishment is the role of the criminal courts, whilst Reviews seek to put steps in place to meet the Licensing Objectives.

Revocation

This option should only be exercised if satisfied that no other measures or conditions existed that would prevent the Licensing Objectives from being undermined.

Legal Process following decision of Sub Committee

23. Any party to the hearing may appeal to the Magistrates Court if they are aggrieved by the decision of the Licensing Sub Committee.
24. The Sub Committee's decision does not have immediate effect. It only takes effect when the period for making an Appeal has expired, being 21 days from the date of the decision notice.

Equalities

25. All parties will be treated fairly without discrimination, based on the Law and Natural Justice.

Background Papers: Licensing Act 2003
Guidance Issued Under Section 182 of the Licensing Act 2003
Part III of the Environmental Protection Act 1990

Public Annexes:

Annex A	Premises Licence & Site Plan
Annex B	Noise Abatement Notice
Annex C	Application for Review
Annex D	Suggested conditions
Annex E (123)	Representations from Surrey Police Licensing
Annex F	Representations from interested parties.