

LICENSING SUB-COMMITTEE
DATE OF HEARING: 5TH SEPTEMBER 2023

DETERMINATION OF A PREMISES LICENCE APPLICATION FOR BELLUNO ITALIAN RESTAURANT, NEWTON ST CYRES EX5 5DA

Cabinet Member(s): Cllr David Wulff, Cabinet Member for Community and Leisure

Responsible Officer: Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing

Reason for Report: An application has been received from the Home Office (Immigration Enforcement) for a premises licence to be reviewed under the Licensing Act 2003. The premises is Belluno, Italian Restaurant, Newton St Cyres, Exeter, Devon, EX5 5DA

The licensing authority (Mid Devon District Council) must hold a hearing to determine the application.

RECOMMENDATION: That this review application be decided in accordance with the licensing objectives.

Financial Implications: The potential cost of defending an appeal in the courts.

Legal Implications: If there is an appeal against the decision Mid Devon District Council (the Council) could find itself bearing the costs.

Risk Assessment: If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court.

Equality Impact Assessment: No equality issues identified for this report.

Relationship to Corporate Plan: Not applicable

Impact on climate change: Not applicable

Additional information relevant to this application: None

1.0 THE PROCESS

1.1 The Licensing Act 2003 ('the Act') introduced a new concept into licensing legislation – that of a premises licence review and it is a key part of the licensing process.

- 1.2 At any stage following the grant of a premises licence, a responsible authority (see below), or any other person, such as a resident living in the vicinity of the premises, may ask a licensing authority to review a licence because of a matter arising in connection with one or more of the licensing objectives. The licensing objectives are:
- the prevention of crime and disorder
 - public safety
 - the protection of children from harm
 - the prevention of public nuisance
- 1.3 The process of applying for a review of a licence under the Act is prescribed by regulation and requires the applicant to copy the application to the licence holder, the relevant licensing authority (the Council) and all of the responsible authorities. These are the police, fire service, weights and measures, body responsible for health and safety, the planning authority, the body responsible for child protection, the health authority, and the Home Office.
- 1.4 On receipt of the application the Council is obliged to advertise it by displaying a notice prominently at the Council offices and at the premises so passers-by may read it. A notice must also go on the Council's website.
- 1.5 Any of the responsible authorities and any other interested parties then have 28 days to make any representations.

2.0 PREMISES AND HISTORY

- 2.1 Belluno Italian Restaurant is a premises in Newton St Cyres, Exeter, Devon, EX5 5DA. **Annex 1** is a picture of the restaurant.
- 2.2 The premises licence was transferred in 2018 from the Crown and Sceptre public house, owned by Heavitree Brewery. The licence holder of the premises is Kirton Ventures Limited, who own the freehold and lease the premises to Belluno Bar and Grill Limited. Mr Haqif Derti, the director of Belluno Bar and Grill Limited, has been the Designated Premises Supervisor since August 2018.
- 2.3 A copy of the public register relating to the premises licence is attached to this report as **Annex 2**. It contains details of the licensable activities authorised, the times permitted and the conditions to which the premises must operate.
- 2.4 A copy of the plan for the premises is attached to this report as **Annex 3**.
- 2.5 The statutory guidance specifies that *.....Licensing authorities should look to the police as the main source of advice on crime and disorder* (Paragraph 2.1). The licensing authority has contacted the police as part of the review process and they have no crime and disorder concerns with regards to this premises. In addition it should be noted that during the period of the premises licence to date no concerns in relation to crime and disorder have been raised by any other responsible authority with the Council.

3.0 REVIEW APPLICATION SUBMITTED BY THE HOME OFFICE (IMMIGRATION ENFORCEMENT)

- 3.1 An application to review the premises licence was received by the Council on 14 June 2023 as per **Annex 4**. The application included a detailed licence review pack and this is attached as **Annex 5**.
- 3.2 The review application states that, illegal working has been identified at this premises. This relates to the following licensing objective:
- the prevention of crime and disorder
- 3.3 The supporting documents submitted by the Home Office (Immigration Enforcement) contain records made by Immigration officers arising from an enforcement visit conducted at Belluno Italian Restaurant on the 9th of December 2022.
- 3.4 The documents also contain the reasons why they have called for the review. For ease they are summarised below.
- 3.5 *Section 36 and Schedule 4 of the Immigration Act 2016 amended the Licensing Act 2003 to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 06 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.*

A firm response to this criminal behaviour is required to ensure that the licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers, and deny work to the local community, evade the payment of income tax and (unlawfully) inflate their profits to the expense of others. Merely remedying the existing situation (for instance by the imposition of additional conditions or a suspension) is insufficient to act as a deterrent to the licence holder and other premises' licence holders from engaging in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally. Immigration Enforcement asks that the premises licence is revoked.

4.0 RESPONSIBLE AUTHORITIES

- 4.1 The application to review was copied to all of the responsible authorities.
- 4.2 No representations were received from other responsible authorities.

5.0 OTHER PERSONS

- 5.1 The Act allows 'other persons' to make representations provided they are relevant to one or more of the licensing objectives. Representations may be positive or negative in that they can either be in support of the application to review or alternatively, in support of the premises subject of the review.
- 5.2 The Council received three letters/representations from the public in response to the public notices.
- 5.3 It should be noted that two of these were in support of the application (or "positive"). These included positive experiences about the nature of the premises and the positive contribution the premises made to the community. They have not been accepted as relevant representations, as in the view of the Licensing Officer, they did not relate to the likely effect of the licence on the promotion of one or more of the licensing objectives. One representation was 'negative' but the person wished to remain anonymous. The Council does not accept anonymous representations. As a result, none of the representations are included in this report bundle.

6.0 LICENCE HOLDER RESPONSE

- 6.1 The licence holder's legal representative, Isca Legal LLP, has responded to the application on their behalf and their submissions and supporting documents are attached at **Annex 6a, 6b and 6c**.
- 6.2 It provides a comment in response to the points raised by the Home Office (Immigration Enforcement). It goes on to state, amongst other things, that there is no evidence for the Home Office (Immigration Enforcement) to assert that there has been any criminality at the premises.

7.0 LICENSING POLICY

- 7.1 The Act requires the Council as the licensing authority to formally adopt a policy setting out how it will deal with its duties under the Act. That policy must be reviewed every five years and this Council formally adopted the current policy which came into effect on 7 January 2019.
- 7.2 Members must have regard to the policy when making their decision. A copy will be available at the hearing and it is also available on the Councils website here: [Statement of Licensing Policy Licensing Act 2003 \(middevon.gov.uk\)](http://middevon.gov.uk)
It contains the following pieces of information.
- 7.3 Mid Devon District Council has a duty to administer and enforce the Licensing Act 2003 (the "Act") which gives local authorities responsibility for licensing the sale and supply of alcohol, regulated entertainment and the provision of late night refreshment. (Paragraph 1.1)

- 7.4 The purpose of the licensing function is to promote the licensing objectives through the effective regulation of licensed premises, qualifying clubs and temporary events. The authority is keen to foster a safe and vibrant leisure economy and will work with applicants and licence holders to encourage and sustain well managed premises which make a positive contribution to the community (Paragraph 3.1)
- 7.5 When determining applications the Licensing Authority will have regard to this policy, the Act and Section 182 Guidance. The overriding principle adopted by this Authority will be that each application will be determined on its merits. (Paragraph 4.4)
- 7.6 Any application for a review should be treated seriously. Responsible authorities will aim to give licensees early warning of any concerns identified at a premises, and talk to the licence or certificate holder to establish whether there are any steps they may be willing to take to rectify the situation. (Paragraph 4.44)
- 7.7 When considering a review of a premises licence or club premises certificate, the Authority will expect the applicants for the review to provide evidence of infringements of licensing regulations, failure to comply with licence conditions and/or of failure to promote the licensing objectives. (Paragraph 4.46)

8.0 GOVERNMENT GUIDANCE

- 8.1 Licensing authorities must have regard to the Government Guidance issued under Section 182 of the Licensing Act and the current version is that which was issued by the Home Office in December 2022. A copy will be available at the hearing and it can also be viewed here: [Revised Guidance issued under section 182 of the Licensing Act 2003 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
It includes the following:
- 8.2 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety (Paragraph 2.5)
- 8.3 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate

for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises. (Paragraph 2.6)

- 8.4 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. (Paragraph 11.7)
- 8.5 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation. (Paragraph 11.10)
- 8.6 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder. (Paragraph 11.17)
- 8.7 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker (Paragraph 11.18)
- 8.8 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual. (Paragraph 11.21)
- 8.9 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated, it should be rare merely to

remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives. (Paragraph 11.22)

- 8.10 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. (Paragraph 11.24)
- 8.11 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. (Paragraph 11.26)
- 8.12 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 (Paragraph 11.28)

9.0 DETERMINATION AND OPTIONS

9.1 An 'order of play' document setting out how the hearing will run is attached at **Annex 7**.

9.2 The section 182 guidance further states:

It is important that a licensing authority gives comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act. (Paragraph 13.10)

9.3 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local

residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court. (Paragraph 13.11)

- 9.4 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (Paragraph 9.43)
- 9.5 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination. (Paragraph 9.44)
- 9.6 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- 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;
 - 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);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence. (Paragraph 11.19)
- 9.7 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should

generally be directed at these causes and should always be no more than an appropriate and proportionate response. (Paragraph 11.20).

9.8 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence. (Paragraph 11.23)

9.9 Conditions can only be attached to a premises licence if they are considered appropriate for the promotion of the licensing objectives. If consideration is being given to amending or attaching conditions, the following extract of Section 182 Guidance must be taken in to account:

The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);

- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format. (Paragraph 1.16)

9.10 Members have five working days from the conclusion of the hearing to make a decision.

10.0 APPEAL

10.1 If any party (i.e. applicant or 'other person') is dissatisfied with the decision made then they have the right of appeal to the Magistrates' Court within 21 days of formal notification of the decision.

List of Annexes to this Report

Annex 1:	Picture of the restaurant
Annex 2:	Copy of the public register relating to the premises
Annex 3:	Plan of the premises
Annex 4:	Application to review the premises licence
Annex 5:	Review pack submitted by Home Office (Immigration Enforcement) [Disclaimer – Annex 5 documents have been redacted by Home Office (Immigration Enforcement) following their guidelines for redaction]
Annex 6a – 6c:	Licence holder's submissions and supporting documents
Annex 7:	Order of play

Contact for more Information: Alan Drake adrake@middevon.gov.uk / Simon Newcombe (snewcombe@middevon.gov.uk)

Circulation of the Report: Legal / Regulatory Sub-Committee / Licence holder and their representative / Review applicant

List of Background Papers:

- Licensing Act 2003 - [Licensing Act 2003 \(legislation.gov.uk\)](http://legislation.gov.uk)
- Section 182 Guidance [Revised Guidance issued under section 182 of the Licensing Act 2003 \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)
- Mid Devon District Council Licensing Act Policy - [Statement of Licensing Policy Licensing Act 2003 \(middevon.gov.uk\)](http://middevon.gov.uk)