

LICENSING ACT 2003

APPLICATION FOR REVIEW OF A PREMISES LICENCE

SUBMISSIONS ON BEHALF OF RESPONDENTS TO THE REVIEW

Licensing authority

Mid Devon District Council

Licence details

Licence no MDV PR0088

Belluno Italian Restaurant

Newton St Cyres

EX5 5DA

Applicant for review

Home Office

Respondents to review

Licence holder – Kirton Ventures Limited

Designated Premises Supervisor – Mr Haqif Derti

Suggested reading

Licensing Act 2003, especially sections 4 and 51 – 52

Home Office revised guidance issued under section 182 Licensing Act 2003 (April 2018 revision) – in particular part 11 pp 89 – 95 *Reviews*

Local Authority guidance on licence reviews from Dacorum Borough Council

1. Background

- 1.1. This is an application by the Home Office to review the licence of this popular Italian restaurant. It is accepted the Home Office is a *responsible authority* and entitled to request this review. The basis of the review request is an unproved allegation of employment of illegal workers at the premises.
- 1.2. Belluno's is an Italian restaurant fronting onto the main Exeter – Barnstaple A377 road in the centre of Newton St Cyres. It has been operating in its present guise since July 2018. Prior to then it was the Crown & Sceptre pub, operated by Heavitree Brewery. Belluno's was established as a replacement business when the pub use ceased.
- 1.3. The freehold of the premises is owned by Kirton Ventures Limited (company number 03013312) who is also the licence holder. Kirton has no direct involvement in the operation and management of Belluno's.
- 1.4. The premises and business are let on a lease to Belluno Bar & Grill Limited (registered company number 12211240). Mr Haqif Derti, who is a director of this company, is the Designated Premises Supervisor. Mr Derti is an experienced restaurateur and of good character. He has worked in the hospitality industry since 2004 and run and managed restaurant businesses on his own account since 2017.
- 1.5. Belluno's is in an area with an otherwise limited restaurant offering. It is popular with couples and families and as a venue for business entertainment and staff hospitality.
- 1.6. It should be noted that Kirton does not *trade as* Belluno as claimed in the application notice displayed outside the Premises. Kirton and Belluno are two separately owned and managed businesses.

2. Events of and following raid on 9 December 2022

- 2.1. The Immigration Enforcement attended the Premises on 9 December 2022 (the "Raid") by a large number of agents dressed in fatigues, the exact number of whom is

not known. There had been no prior inquiries or complaints received from the Home Office and was no pre-warning of the raid.

- 2.2. The timing and conduct of the raid at the beginning of service on a Friday evening appeared to have been aimed to cause as much disruption to the business and to spoil the experience of as many of the restaurant's customers as possible, a large number of whom were workers attending Christmas functions. Although Belluno did nothing to impede the entry of Immigration Enforcement, it cannot be said they entered the Premises with the *fully informed consent of the occupier* as claimed in the Applicant's Case Summary.
- 2.3. Following the Raid on the Premises, Belluno received a Request for Right to Work information from the Applicant's Civil Penalty Compliance Team ("CPCT") dated 29 December 2022 (the "Request"). Information relating to 5 individuals encountered on the Premises during the Raid was requested.
- 2.4. The Request stated that Immigration Enforcement "[were] currently considering the evidence in your case to determine if you are liable for a civil penalty and if so for what amount".
- 2.5. On our client's behalf we submitted an initial response to the CPCT on behalf of Belluno on 9 January 2023 (the "Initial Response") and a more detailed response with supporting evidence on 16 January 2023 (the "Response"). Copies of which with appropriate redactions have been appended to these representations.
- 2.6. Save for receiving an automated response to both the Initial Response and the Response at the time of sending, neither we nor Belluno have received any further correspondence from the CPCT since the date of the Request. Notably, the CPCT have not made any finding against Belluno or made any recommendations to them.
- 2.7. For a period of nearly 6 months now following the Request, Immigration Enforcement have taken no further action against Belluno.

- 2.8. The committee will no doubt find it surprising that the Applicant has made no reference to the Respondents' responses in its application.
- 2.9. Prior to the raid the Respondents maintained immigration status records at the premises by retaining copies of employees' passports, share codes (the record of right-to-work status) and national insurance numbers. Since the raid and as an additional precaution the Respondents have contracted this function to their accountants as an add-on to the payroll function.

3. The Application

- 3.1. The application is essentially made in reference to alleged but unproven illegal activity and disorder at the licensed premises. This ground has historically been mainly applied to instances of criminal activity such as drug misuse in licensed premises and where late-night disorder has occurred. As a matter of policy the Home Office has from time to time sought to introduce illegal working as a ground of criminality but there is as yet no authoritative judicial precedent to support this extension. Thus the present application is made on the basis of policy and not law.
- 3.2. The Applicant's Case Summary states that, '*A referral **has been made** to the Civil Penalty Compliance Team in relation to the illegal working*'.¹ The clear implication is that the referral to the CPCT is a recent development in the matter and not (as is the case) an event that occurred in December 2022. The Application was dated 14 June 2023 and it appears that this may be a deliberate attempt to misrepresent the facts or urgency of the case.
- 3.3. The principal criminality alleged in the Application relates to supposedly illegal working by non-UK nationals who are alleged not to have the right to work in the UK.

¹ Emphasis added

- 3.4. The Application also alleges a breach of obligations with regard to the sale of alcohol and the supervision of the premises. The Application also makes indirect reference to failures to pay workers properly and to tax evasion. No evidence is presented in support of any of these allegations and they are neither recognised nor understood by the Respondents.
- 3.5. No other criminality is alleged and no disorder.
- 3.6. The allegations are not accepted by the Respondents and have not been proved. The Respondents have provided a detailed response to the Home Office to refute the allegations in their entirety, in the form of their responses dated 9 and 16 January 2023. The Applicant's failure to make any reference to the Respondent's position is blatant.
- 3.7. With the exception of the employment status of the five identified individuals whom the Applicant alleged to have been employees, none of the matters highlighted in the Application have any bearing on or application to the subject premises. The application does not even attempt to make any evidential link to the present Application.
- 3.8. The Application fails to indicate that any proper consideration has been given in the context of this specific matter to alternatives to the revocation remedy it seeks.

4. Law

- 4.1. The source legislation is the Licensing Act 2003. It is common ground that licensing matters must be determined in accordance with the principles laid down in the Act and that the only relevant principle in this case is section 4(2)(a) – the prevention of crime and disorder.
- 4.2. The committee is being asked to review the licence under section 51 and, if appropriate, apply the requirements of sections 52 and in particular subsections (3) and (4) which are set out below.

s.52(3)The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers [F1appropriate] for the promotion of the licensing objectives.

s.52(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.

4.3. It will be noted that these provisions do not of themselves identify the standard of evidence or of proof required:

4.3.1. First, to enable the committee properly to conclude any action is required; and

4.3.2. Secondly, if it does so conclude, what that action should be.

4.4. Partial guidance on these issues is provided by Home Office Revised Guidance April 2018 revision, part 11 and of particular note are the following provisions:

4.4.1. Paragraph 11.10 – it is considered good practice to give licensees early warning and advice of any problems. Reviews should not be used to undermine local cooperation.

4.4.2. Paragraph 11.17 – it is open to committees to decide that no formal action is required at the conclusion of a review.

4.4.3. Paragraph 11.20 – authorities should look to identify the causes of any problems identified and take no more than appropriate and proportionate action to address the causes.

4.4.4. Paragraph 11.23 – revocation of a licence should be a last resort.

- 4.5. In addition the committee is referred to the Dacorum Borough Council guidance on licence reviews from which it is clear evidence as opposed to supposition is required to justify a licence review.
- 4.6. Whilst the committee is not a Court, it must nevertheless act by reference to evidence and reach decisions within a range of reasonableness *per* the well-established *Wednesbury*² principles.

5. Submissions

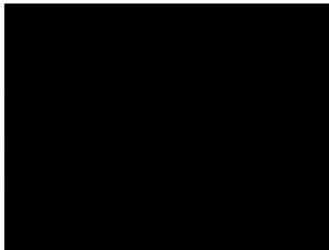
- 5.1. Although neither the statute nor the published guidance addresses the level of proof required to establish the licensing objective of the prevention of crime and disorder, the standard of proof would normally be higher where a specific allegation of criminality is made against the operator of the premises than might be needed to establish criminal conduct by third persons (*eg* drug dealing) from the premises. The Applicant's evidence singularly fails to meet the required standard.
- 5.2. The failure of the Applicant to disclose the Respondents' responses to its inquiries is a serious omission and something that should put the committee on inquiry as to the reliability of the Applicant's submissions as a whole.
- 5.3. Other than the illegal worker allegations no evidence of any kind is offered to support the Applicant's allegations including but not limited to those of under-paying staff or tax evasion. It is assumed these allegations have been made purely in the hope of prejudicing the committee against the Respondents and must be disregarded. Such unsupported allegations also put in question the reliability and motives underpinning the Applicant's action in requesting this review.
- 5.4. The committee is asked to accept that no Immigration offences have been proved to have been committed. As no other criminality has been evidenced, let alone proved,

² *Associated Picture Houses v Wednesbury Corporation* [1948] 1KB223

the committee is urged to conclude that no ground for a review of the licence has been established.

- 5.5. Even if circumstances justifying a review are found to have arisen, it is still open to the committee to decide to deal with the matters identified by other means such as guidance or additional supervision.
- 5.6. Insofar as the committee may nevertheless decide upon a review, it is asked to note that any modifications to the licence should be considered on a sliding scale by reference to the matters identified in section 52(4) Licensing Act and Home Office guidance.
- 5.7. The objective of the review should be to address the causes of the problems identified and should be appropriate and proportionate. The objective is to address the causes identified and not to punish.
- 5.8. Insofar as any weaknesses in the Respondents' conduct may be identified, it is considered the procedural changes already made by the Respondent are a reasonable response. No further complaints have been made.
- 5.9. It is clear from the tenor of the Application that Applicant's real motive is to pursue a policy objective by seeking to hold up the Respondents as an example to discourage others. That is not a proper licensing objective and it would not be reasonable for the committee to attach any weight to such considerations.
- 5.10. If the committee were to accede to the Applicant's demand for the revocation of the licence this would inevitably result in the closure of the Respondents' business to the detriment of its customers, suppliers, staff and the wider local economy.

6. Testimonials



10th July, 2023.

Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

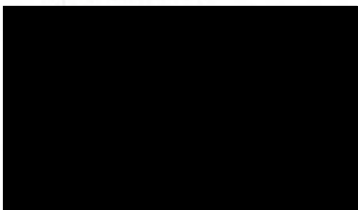
Dear Sir

I understand you are currently reviewing the licence for Bellunos in Newton St Cyres.

I have been to this restaurant on numerous occasions both with friends and family and find both the service and food to be excellent. It is the only restaurant in the area and provides a comprehensive menu of quality food coupled with a friendly efficient service. The atmosphere is very relaxing and gives the vibe of a small family run business where they actually enjoy having you as a customer and go above and beyond to make you feel welcome.

I feel it would be a great shame to lose this local eatery as the only other restaurant alternative, is to travel into Exeter which is obviously much further. I feel as a council you should be trying to support these small local businesses as not everyone wants to frequent national chains.

Yours faithfully



10 July 2023

The Licensing Department
Mid Devon District Council Offices
Phoenix House
Phoenix Lane
TIVERTON EX16 6PP

Dear Sirs

I am writing to you regarding the application for review of the premises' licence occupied by Kirton Ventures Limited t/a Belluno, Newton St Cyres, EXETER EX5 5DA.

I am local to the area and have visited "Bellunos" on a number of occasions for evening meals with both friends and family. The restaurant is popular, often with only ever a few tables spare and has a bustling atmosphere even on weekdays. The restaurant offers good quality Italian cuisine at a reasonable price and is the only Italian restaurant in the area. The restaurant offers a refreshing alternative to a traditional pub grub for locals which can be enjoyed without the need to travel into Exeter. It is also in a good location with good public transport links with a bus stop immediately outside and Newton St Cyres train station a short walk away. This, alongside its good reputation, helps to draw all types of people to the restaurant.

As a coeliac I find it difficult to find restaurants in the area which offer a range of gluten free dishes to choose from. Bellunos offer a number of options on their menu as gluten free including pasta dishes, risotto and salads. The staff have always been extremely accommodating and are regularly willing to adapt a dish at my request, for example not adding croutons to a salad. This is extremely useful as many restaurants today do not make their dishes from scratch and so cannot be so flexible. This is the case with a number of Bellunos' neighbouring restaurants.

The staff always offer exemplarily customer service which is rare today. The waiters and waitresses are familiar with the menu and are happy to offer recommendations. They are attentive without being too disturbing or pressurising and always seem incredibly pleased to see you. They are always helpful even near closing time!

Bellunos is the only Italian restaurant in the area and it is useful to be able to enjoy quality Italian food so close by without having to travel far into the city. I, like many locals enjoy supporting an independent business and it would be a real loss to the area if Bellunos was forced to close.

Yours faithfully



From: [REDACTED]
To: [REDACTED]
Subject: Belluno Restaurant, Newton St Cyres.
Date: 09 July 2023 19:50:20

Good Evening [REDACTED]

I would like to voice my support for Belluno Restaurant, I understand that their licence is under review and being dealt with by your firm.

This restaurant provides a valuable service in a rural village, the service and Italian based menu is excellent. It is an ideal venue to meet friends from the surrounding rural area for a lunch or evening meal, without the need to travel into Exeter to find a similar venue.

The only other venue in the village only serves food on limited days during the week. It would be a great loss to the local community if the licence is not renewed. The staff have always been friendly and helpful to ensure that your visit is a happy one. They are willing to work to provide a good service in a rural area, where similar venues are few and far between.

Yours Sincerely

[REDACTED]

Isca Legal LLP

11 July 2023

LICENSING ACT 2003

APPLICATION FOR REVIEW OF A PREMISES LICENCE

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Ref EX1/AC1.25

Solicitors to the Respondents