

REPORT TO THE LICENSING SUB-COMMITTEE – MONDAY 2nd AUGUST 2021	
APPLICATION BY SURREY POLICE FOR SUMMARY REVIEW OF PREMISES LICENCE - SPAGHETTI TREE, 633 LIMPSFIELD ROAD, WARLINGHAM, SURREY, CR6 9DZ	
Report of:	Ian Garrod, Licensing Officer - Tel: 01883 732794 licensing@tandridge.gov.uk
Purpose of Report:	To consider an application for a review of a premises licence following an expedited / summary licence review under Section 53A of the Licensing Act 2003 in respect of: Spaghetti Tree, 633 Limpsfield Road, Warlingham, Surrey, CR6 9DZ.
Publication status:	Open
Recommendations:	<p>The options available to Members of the Licensing Sub-Committee are: That the Sub-Committee considers the evidence submitted by all parties and then determines the steps it considers appropriate to promote the licensing objectives by selecting one of the options below:</p> <ul style="list-style-type: none"> (a) take no action; (b) issue a formal warning to the premises supervisor and/or premises licence holder; (c) modify the conditions of the licence; (d) exclude a licensable activity from the scope of the licence; (e) remove the designated premises supervisor; (f) suspend the licence for a period not exceeding three months; or (g) revoke the licence. <p>There are a number of options open to Sub-Committee in relation to the review of the interim steps:</p> <ul style="list-style-type: none"> (a) leave the interim steps in place; (b) modify the interim steps; (c) amend the interim step.
Appendices:	<p>Appendix 'A' – Premises Licence for Spaghetti Tree Appendix 'B' – Current Plan of Premises Licence Licensable area Appendix 'C' – Location Plan of Spaghetti Tree Appendix 'D' – Application for Review by Surrey Police Chief Superintendents Certificate Appendix 'E' – Additional Conditions requested by Surrey Police Appendix 'F' – Decision Notice of Interim Steps Hearing Appendix 'G' – Other representation by Environmental Health and conditions requested Appendix 'H' – Representations by members of the Public</p>

Appendix 'I' – Letters of Support
Appendix 'J' – Comments by the Premises Licence Holder
Appendix 'K' – Relevant sections of Guidance issued under Section 182 of the Licensing Act 2003
Appendix 'L' – Relevant sections of Tandridge District Council Licensing Policy.
Appendix 'M' - Policy.

Background Information

- 1 A premises licence is required for any venue where any 'licensable activity' under the Licensing Act 2003 is carried on. Such activities include the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment etc. Authorisation from the Council, in its role as the licensing authority, is required to carry on any of these activities at premises within the District.
- 2 The Licensing Sub-Committee ("the Sub-Committee") is responsible for the exercise of many of the functions of the licensing authority, including determination of review applications.
- 3 The Spaghetti Tree Restaurant has held a Premises Licence since October 2005 when it was converted under the then new Licensing Act 2003. This was granted for the building and included the following:-
 - Supply of alcohol
 - Regulated Entertainment (indoors only) namely: films, indoor sporting events, live music, recorded music and anything of a similar description; provision of facilities for making music & dancing.
 - Late night refreshment
- 4 A copy of the Premises Licence is attached at **Appendix 'A'** and plans of the Premises in **Appendix 'B'**.
- 5 Initially, the Premises operated as a pub then a café and closed whilst still keeping its Licence. In April 2021, after being closed for several years it re-opened as a restaurant, the Spaghetti Tree.
- 6 The current premises licence holder is Rondanini Ltd, and they have held the licence since September 2012.
- 7 The Designated Premises Supervisor for the premises is Maria Antonella Romano who took the position in April 2021.
- 8 On the 6th July 2021, following an incident of serious disorder on the 3rd July, an application for a summary review of the Premises Licence for Spaghetti Tree was received by the Licensing Authority. This was submitted by Surrey Police as attached at **Appendix 'D'**.
- 9 A copy of the certificate made under section 53(1 B) of the Act, that confirms that a senior member of Surrey Police is of the opinion that the premises are associated with serious crime or serious disorder, is attached at **Appendix E**.
- 10 The incident on 3rd July 2021 was classed as serious disorder by the Police because several fights broke out amongst customers. Glasses, poles and other items were used as weapons, resulting in injuries to customers and staff. Weapons were used and S.I.A. staff were unable to control the situation. The incidents were captured on CCTV and mobile phones, the footage from which was supplied by the Police
- 11 Arising from 1.6 to 1.8 above, the Sub-Committee conducted an initial hearing on the 7th July 2021 to consider whether interim steps should be taken in respect of the premises licence. The hearing was attended by police and restaurant representatives and the above

mentioned CCTV / mobile phone footage was replayed. As per the Decision Notice at **Appendix F**, the Sub-Committee determined that three additional conditions be imposed on the premises licence, pending the full hearing which was subsequently scheduled for the 2nd August and is the subject of this agenda pack.

- 12 The Decision Notice was sent to the Premises Licence Holder and Designated Premises Supervisor advising them that the conditions came into effect straight away. This was on 7th July.
- 13 As part of the review procedure there must be a notice period of 10 working days when representations can be made. During this period, a notice must be displayed on the premises giving details of the review and the dates in between which people can object. This notice was placed on 7th July 2021 and remained at the premises until 20th July 2021.
- 14 The Notice was also placed at the offices of the Council and displayed on the outside noticeboard.
- 15 During the consultation period, representations were received from one responsible Authority, Environmental Health, who have requested conditions as **Appendix H**
- 16 Councillor Morrow (a District Councillor for the Warlingham East, Chelsham & Farleigh Ward) and Warlingham Parish Council made representations requesting changes to timings and additional conditions. 24 residents initially made objections but some have been withdrawn. The remaining objections are outlined in **Appendix I**.
- 17 Surrey Police have also requested that the additional conditions at **Appendix G** be added to the premises licence with a view to avoiding any repeat of the incident that took place on July 3rd 2021.
- 18 List of objectors

NAME	OBJECTION
Councillor Simon Morrow	Public Nuisance (Noise) Public Safety (Parking) Prevention of Crime & Disorder
Warlingham Parish Council	Public Nuisance (Noise)
Dawn McKeown	Public Nuisance (Noise)
Gerry & Mrs Kath Sawyers	Public Nuisance (Noise)
Paul Tong	Public Nuisance (Noise)
Tony Campbell	Public Nuisance (Noise)
Rev Michelle Edmonds & Parochial Church Council of St Christopher's Church	Public Nuisance (Noise)
Leonard Orfanu	Public Nuisance (Noise)
Kim Durling	Public Nuisance (Noise)
Carol Green	Public Nuisance (Noise) Public Safety (Parking) Prevention of Crime & Disorder
Sarah Tutcher and Thomas Gravesteijn	Public Nuisance (Noise) Prevention of Harm to Children Prevention of Crime & Disorder

Lynne Poole	Public Nuisance (Noise) Public Safety Prevention of Crime & Disorder
Roy and Sue Eaglestone	Public Nuisance (Noise)
Ms Lauren Gates & Daniel Mcmillan	Public Nuisance (Noise) Prevention of Crime & Disorder
Ms Alison Williams & Mr Steve Eaglestone	Public Nuisance (Noise)
Mr Gerald Doherty	Public Nuisance (Noise)
Mr Nigel Hardy	Public Nuisance (Noise) Prevention of Harm to Children Prevention of Crime & Disorder Public Safety
Mr Graham Leppard	Public Nuisance (Noise)

- 19 There have been several letters of support written with regards to the premises and how it is run from those outlined in **Appendix 'J'**
- 20 List of those who wrote letters of support

Jennifer Heinsohn
Rachael Parsons
Russ Dennis
Shauna Parsons
Rebecca Hales
Linda White
Carina Lepore
Kevin & Laurie Martin
Michelle Higgins
Kit Mlynar
Daniel Lewis
Jill Small
Susie Homes
Yvonne Small
Rosetta Grieco
Nick Robinson

- 21 On receipt of the Summary Review Notice, the Premises Licence Holder representative responded with regards to the validity of the objection is attached at **Appendix 'K'**

Policy & Guidance – Points For Consideration

Section 182 Guidance

22. The relevant paragraphs of the Section 182 Guidance issued by the Secretary of State in relation the Sub-Committee's decision are set out below and must be considered by the Sub-Committee:

1.2 - 1.5	Licensing objectives and aims
1.16	Licence conditions – general principles
9.37 - 9.38	Hearings
9.42 - 9.44	Determining actions that are appropriate for the promotion of the licensing objectives

11.16-11.23	Powers of a licensing authority on the determination of a review
11.24-11.28	Reviews arising in connection with crime
13.10	Giving reasons for decisions
12	Summary Reviews

23 The relevant sections of Section 182 Guidance is provided at **Appendix 'L'**

The Council – Licensing Policy

24 The main sections of the Councils Licensing Policy which are particularly relevant to the Sub-Committee's decision are set out below and should be considered when determining this application:

- 4 Fundamental principles
- 5 Decision making process
- 7 Premises licences
- 9 The prevention of crime and disorder

25 The relevant sections of Tandridge District Council Licensing Policy are provided at **Appendix 'M'**.

Legal Considerations

26 The Sub-Committee must have regard to the promotion of the four licensing objectives namely:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- and the protection of children from harm in exercising its functions under the Licensing Act 2003.

Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy.

27 Further after considering what steps to take, if any, in relation to the substantive review the Sub-Committee must immediately thereafter review the interim steps imposed at the initial hearing on 7th July 2021 and determine whether to modify, remove or maintain the interim steps until the time for any appeal of the substantive review decision made under Section 53C has expired or the outcome of any appeal. This is required to ensure that the appropriate and proportionate safeguards for the promotion of the licensing objectives remain in place.

28 The Sub-Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on a Licensing Authority. The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

29 In this case it was summed up that:

- A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

- 30 Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.
- 31 This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:
- 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'
- 32 Relevant representations must be taken into account upon determining any measures considered necessary for the promotion of the licensing objectives. It is open to the Sub-Committee to decide to:-
- take no action;
 - issue a formal warning to the premises supervisor and/or premises licence holder;
 - modify the conditions of the licence;
 - exclude a licensable activity from the scope of the licence;
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding three months; or
 - revoke the licence.
- 33 The Sub-Committee are advised that the final decision should be based on the individual merits of the application of the review and the factual findings made at the hearing. All irrelevant factors must be disregarded.
- 34 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is reemphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications Members will consider and weigh up all the information available and representations made, including those from the public and the responsible authorities particularly the Police.

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