

Milton Keynes Council Licensing Authority

Representation under 51(3)(b) of the Licensing Act 2003

Application: Section 51 of the Licensing Act 2003 - Review of Premises Licence

Applicant: Home Office

Premises: The Don Restaurant, 502 Elder Gate, Milton Keynes, MK9 1LR

Context of the role of the Licensing Authority as a Responsible Authority

The Licensing Authority has three functions under the Licensing Act 2003 (“The Act”). One is as the administrator of the licensing regime, the second is to determine applications in accordance with the provisions of the Act and thirdly as a responsible authority. Each of these are separate functions.

Guidance issued to Licensing Authorities by the Home Secretary under section 182 of the Act states (para 9.13) “It is... for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.” This section simply requires the “Licensing Authority” to promote the licensing objectives.

The Council’s statement of Licensing Policy does not outline a specified role for itself as a responsible authority but does place a responsibility and direction on itself at para. 11.8 to “promote ‘good practice’ in relation to the operation of licensed premises” and to “work closely with stakeholders so as to achieve on-going improvements in standards.” Further, para. 25.1 of the Policy states that upon review a number of matters may be considered as “serious shortcomings” and includes when a Premises is found to be involved in immigration offences

Following this it is considered appropriate for the Licensing Authority itself to consider any application for the review of any premises licence carefully in its designated statutory role as a responsible authority and particularly so where the Council’s own Policy has indicated that it considers the content of that review as serious.

Limitation of the Licensing Authority Representation

Mr Akikur Rahman is the current premises licence holder and has been since August 2015 and I sought to arrange an inspection with him at the premises in order to ascertain his compliance with the provisions of the Act. Due to the Covid 19 pandemic, the government’s social distancing requirements and Mr Rahman stating that he was in the high risk category, it was decided not to conduct an in person licensing inspection. This may be possible prior to the hearing but this is uncertain at the present time.

As an alternative I e-mailed Mr Rahman a list of questions to offer him the opportunity to evidence compliance with the matters normally checked on an inspection. Mr Rahman was asked to respond in full by 31 March 2020 (to allow further enquiries to be made if necessary) but as of today's date has not yet done so. At present I cannot confirm that the premises are compliant with the terms of its premises licence, the provisions of the Act and whether or not the licence objectives are being undermined.

The Home office state that 3 individuals without the right to work in the UK were found working at the premises and the licensing objective of the prevention of crime and disorder was therefore undermined. It is understood that the premises licence holder disputes that individuals were employed illegally and this representation should not be taken as drawing any conclusion as to whether the offences did or did not occur. That is a matter for the sub-committee to consider.

There are however matters present in the Home Office evidence that raises concerns and as I have not yet had a response from Mr Rahman these concerns are reliant on the information provided by the Home Office. I have accepted the witness statements as correct in terms of the broad facts, for instance that individuals who could not lawfully work in the UK were in the premises Kitchen, whilst acknowledging that the interpretation of those facts (i.e. were they employees or guests) is disputed.

This representation is therefore limited more narrowly to the basic facts below and at present without reference to anything Mr Rahman may evidence to the contrary.

1) Responsibility for the premises

The review indicates that the "company" operating the premises has changed on 3 occasions and that Mr Rahman was a director of 2 of previous companies but not the current one. It is stated that he was now just an employee and had only worked the new company for 2 weeks.

As far as the Licensing Authority is concerned, Mr Rahman is the licence holder and DPS and responsible for any undermining of the Licensing Objectives. However a licence holder employed by (and instructed) by a company could be a concern and I presently am not assured that the current licence holder and DPS are in day to day control of the premises.

2) Compliance with the Licence and provisions of the Licensing Act 2003

As an inspection has not been carried out and I have not received a response from Mr Rahman I cannot confirm that the premises are compliant. Although not a requirement of the Act Officers expect to see written documentation outlining the training undertaken by staff employed at a premises. The Home Office documents indicate that Mr Rahman had no written employment records and it is taken as implied that there were no training records or authorisation for the sale of alcohol either.

3) Individuals in the Kitchen/ Public Safety

It appears as fact that individuals who could not have been lawful employees were in the restaurant kitchen. The licence holder denies that they were working and stated that they were guests cooking their own food.

It is not known if the appropriate food hygiene practices would have been followed by these guests or whether they undertook any training. Employees handling food are required to have appropriate training and supervision. There is a safety risk to individuals simply allowed to enter into a commercial Kitchen without training/supervision.

Without a good reason as to why, and without assurance that the appropriate hygiene and safety measures are/were in place, allowing non-employees to enter and cook food in the restaurant kitchen is not good practice and undermines the licensing objective of public safety.

In 2015 the premises were found to be advertising that they were open without having registered as a food business. A pre-inspection advisory visit took place in October 2015 and indicated that the premises would have received a rating (out of 5) of "1 - major improvement necessary". An inspection in 2017 gave the premises a hygiene rating of 4, but at its last inspection in 2018 the premises received a "2 - improvement needed".

There is a concern that food hygiene procedures are not taken seriously enough at the premises to simply allow non-trained individuals to enter into the kitchen to cook.

Suggested conditions

Should the sub-committee determine that a premises licence shall remain in effect at the premises it is recommended that the following conditions be placed on the premises:

1) The premises licence holder shall be responsible for contacting the food safety team within 7 days from [the date of decision] to arrange a food safety inspection to occur as soon as reasonably possible. The premises licence holder will be responsible for paying any fee required by the Council's food safety team to conduct that inspection and shall accept the earliest date that can be provided by the food safety team.

2) The premises licence holder shall keep and maintain on the premises a "licensing compliance folder" which shall be easily accessible in order to be provide to a responsible authority officer upon request. This folder shall contain the following:

- A copy of the premises licence
- Copy of the plan attached to the licence
- Confirmation of the age policy adopted at the premises;

- A List of people authorised to sell alcohol by the DPS or, if applicable, another personal licence holder;
 - A training record of each employee authorised to sell alcohol at the premises;
 - A training record of each employee involved in the handling, preparation, cooking and service of food as relevant to their role.
 - An example of the training material used;
 - A refusals log;
 - An age verification policy;
 - An incident book;
- 3) The above information shall be reviewed no later than every 3 months and staff training will be refreshed at least every 6 months and recorded.
- 4) A written record of all employees will be maintained at the premises along with the evidence accepted by the premises licence holder in fulfilment of their legal duty to confirm each employee has the right to work in the UK. This record and the relevant evidence will be produced immediately on request of an authorised officer of a responsible authority.
- 5) The premises licence holder shall only permit access to the kitchen by an employee who the premises license holder is satisfied has been appropriately trained or a person carrying out a legal or contractual duty that requires access to the kitchen.



Adam Ward, Licensing Officer

For the Licensing Authority as designate by(section 13(4)(za) of the Licensing Act 2003.