

FOR CHAIR AND MEMBERS
OF THE LICENSING ACT 2003 SUB COMMITTEE
8 OCTOBER 2024

**APPLICATION TO REVIEW PREMISES LICENCE ON THE GROUNDS OF THE PREVENTATION
OF CRIME AND DISORDER**

Licence holder	Benjamin Wu 408 Geneva Road, Darlington, DL1 4HG	Ref No: LAPREM00478
-----------------------	-----------------------------------------------------------	----------------------------

Premises:	Bambudda Ltd T/A: TAO Asian Street Food 27-28 Blackwellgate, Darlington, DL1 5HX
------------------	-------------------------------------------------------------------------------------------

Licensable Activities:	Sale by Retail of Alcohol – On and off premises 11:00 - 23:00 every day
-------------------------------	---------------------------------------------------------------------------------------

Premises opening Times	09:00 – 23:00 every Day
-------------------------------	-------------------------

Home Office Application	Review of Premises Licence on the grounds of Crime and Disorder
--------------------------------	-----------------------------------------------------------------

Notification to Responsible Authorities/Other Persons:

Home Office (Immigration Compliance and Enforcement) has served notice of this application to the following:

Environmental Health	Chief Fire Officer
Durham Constabulary	Trading Standards
Planning	Public Health
The Licence Holder	The Licensing Authority
Darlington Safeguarding Partnership	

Information on the Premises:	22 August 2024
Information on Council's web site:	22 August 2024

LEGISLATION:

The Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the four Licensing Objectives:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

The Licensing Authority must also have regard to its Licensing Policy and any guidance issued by the Secretary of State. The Licensing Authority may depart from its own Policy or the Secretary of State's Guidance if it has good cause but must be able to give full reasons for such a departure.

DESCRIPTION OF PREMISES

When the Premises Licence application was made the applicant described the premises as:

'We are a restaurant and takeaway based in the centre of the city. The premises has three floors. The business operates the ground floor and basement. We are close to many retail units including House of Fraser and Sainsbury's, a number of take away businesses Uno Momento, Salt and Manjaros and close to the Dolphin Centre and covered market. We offer a variety of food from breakfasts, ice creams, noodles and fried chicken. We intend to offer a range of alcoholic products as an accompaniment to our food offer, and will include bottled and draught beer and a variety of wines.'

PURPOSE OF REPORT

To invite Members to consider an application for a review of the Premises Licence submitted by the Home Office (Immigration Compliance and Enforcement) based on the grounds that it undermines the prevention of the crime and disorder objective.

Members are requested to consider any appropriate action, which may include revocation of the licence.

BACKGROUND OF THE PREMISES

This premises was originally a Royal Bank of Scotland building and in July 2020 an application was made to Darlington Borough Council Planning to convert it from a bank into a restaurant/takeaway on the ground floor and two three bedroom flats above. Planning permission was duly granted in April 2021.

On 5 October 2021, Yoby Ltd applied for a premises licence. As this was a new licence a number of conditions in addition to the mandatory conditions were agreed between responsible authorities and their agents. This licence was subsequently granted on 4 November 2021.

On 3 April 2023 Benjamin Wu applied to transfer the premises licence from Yoby Ltd to him, and this was granted on 10 April 2023 following consultation with the relevant responsible authorities. The licence was subject to a number of mandatory conditions and bespoke

conditions for the premises that were transferred from the previous licence. Benjamin Wu was also the named Designated Premises Supervisor (DPS) on the licence. A copy of this licence is at **Appendix 1**.

APPLICATION TO REVIEW THE PREMISES LICENCE

On 21 August 2024 an application was properly made by Home Office (Immigration Compliance and Enforcement) as a Responsible Authority, to review this premises licence under Section 51 Licensing Act 2003 on the grounds that the crime and disorder objective had been undermined. Responsible Authorities were notified and a review notice was prominently displayed on the premises. A copy of the displayed notice is at **Appendix 2**. Further information was also available on Darlington Borough Council's licensing webpage where all consultations are published.

In summary, on 3 July 2024, the North East Immigration Compliance and Enforcement (ICE) team visited TAO Asian Street Food, 27-28 Blackwellgate, Darlington following intelligence that the premises was employing illegal workers. Entry was gained at around 6.26pm under section 28CA of the Immigration Act 1971 and ICE were accompanied by officers from other Responsible Authorities.

Officers encountered eight people working in the kitchen of the premises, of which three were identified as having no lawful right to reside in the UK, and therefore working illegally. A referral has since been made to the Civil Penalty Compliance Team in relation to their illegal working. At the time of reporting, the civil penalty outcome is still outstanding.

At the time of the visit Bich Thuy Nguyen (Lucy) was a Director of the company and business partner of the Premises Licence Holder Benjamin Wu. When interviewed by an Officer from ICE she claimed to have kept copies of employee documents on her phone, however she was unable to provide these to Officers when requested. This is in breach of condition 28 of the Premises Licence:

The premises licence holder is to undertake right to work checks on all staff who are employed at the licensed premises in a paid or unpaid capacity. A copy of any documents checked as part of the right to work check are to be retained at the licenced premises. These documents will be made available to officers and responsible authorities when requested.

It is also of note that a simultaneous visit to a second premises in Darlington by another enforcement team took place and those premises were also under the control of the Benjamin Wu.

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 6 April 2017. The intention was to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment. The Home Office has requested that the premises licence be revoked to reflect the serious nature of this issue.

The review application is at **Appendix 3** and a comprehensive Premises Licence Review pack (redacted) has been provided by the Home Office, which is at **Appendix 4**.

REPRESENTATIONS

During the statutory consultation period Durham Constabulary made representations in support of the Home Office review application. They made reference to Benjamin Wu and his suitability to manage the premises as Premises Licence Holder and Designated Premises Supervisor. They also expressed concerns of him trying to circumvent the review process by attempting to transfer the licence to a new company established after the visit by ICE Officers. The new company, TAO Rock N Roll Ltd was incorporated on 12 August 2024 and the sole Director is Bich Thuy NGUYEN, who was managing the premises at the time of the visit by ICE Officers.

Police highlighted in their response that the second premises visited simultaneously by ICE Officers is inextricably linked through various registered companies along with people working and involved in their management. The two premises cannot be looked at in isolation as there is clear evidence of joint enterprise in their operation.

The police response (redacted) is produced at **Appendix 5**.

NOTIFICATION

The Premises Licence Holder, Home Office and Police have been issued with a notification to attend this hearing and provided with details of the hearing procedures in accordance with Regulations 6 and 7 of the Licensing Act 2003 (Hearings) Regulations 2005. A copy of these notices are at **Appendix 6**.

THE LICENSING POLICY

Members are referred to the following relevant sections of the Council's Licensing Policy which are reproduced at **Appendix 7**.

Section 1.2 – 1.3	Purpose
Section 6 – 7.3	Premises licence and impact of licensable activities
Section 11.3 to 11.5	Steps to address Crime and Disorder

THE GUIDANCE

Members are referred to the Secretary of State's Guidance in relation to the prevention of crime and disorder and the review process. A copy of the relevant sections of the guidance are reproduced at **Appendix 8**.

ADDITIONAL INFORMATION

Members should note that Home Office Immigration Compliance and Enforcement Officers are protected in law from revealing their identities for the purpose of a review.

MEMBERS' OPTIONS

Members may consider the following options:

1. To modify the conditions on the licence – i.e. to alter, remove or add additional conditions that they consider appropriate to promote the crime prevention, public nuisance prevention, public safety or child protection licensing objectives
2. Exclude a licensable activity from the scope of the licence.
3. To remove the Designated Premises Supervisor, for example, because they consider that the problems are the result of poor management.
4. To suspend the entire licence for a period not exceeding 3 months.
5. To revoke the licence.
6. To take no action against the licence.

If Members are minded to add additional conditions, they must be appropriate to promote the licensing objectives detailed above. Members are reminded that any such conditions should not duplicate existing legislation.

Members are further reminded that any party to the review who is aggrieved at the decision of the Licensing Act Sub Committee (i.e. Premises Licence Holder or Home Office) may appeal the decision to the Magistrates Courts. In the event of such appeal any determination by the Sub Committee will not take effect until the appeal is disposed of.

Contact Officer: Colin Dobson x 5988

Dave Winstanley
Group Director of Services

Appendix 1 – Premises Licence
Appendix 2 – Notice of Review
Appendix 3 – Review Application
Appendix 4 – Review Pack (Redacted)
Appendix 5 – Police Representation (Redacted)
Appendix 6 – Request to attend hearing
Appendix 7 – Extracts from policy
Appendix 8 – Extracts from Section 182 Guidance

For admin use only:
Sub Committee Decision:

Date of Sub Committee:

Reasons:

