

Committee	-	General Licensing Panel
Date	-	29 May 2018
Report of the	-	Executive Director
Subject	-	Application for the review of a Premises Licence – The Chilli Tree Asian Cuisine, 1 King Offa Way, Bexhill on Sea, TN40 2UA 05/00211/LAPRE

---

**Recommendation:** It be **RESOLVED:** That the Review application made under Section 51 of The Licensing Act 2003, be determined.

---

**Head of Service: Richard Parker-Harding**

---

## **1. Introduction**

An application has been made by the Council's Licensing Team (on behalf of the Council in its capacity as the Licensing Authority) for a Review of the Premises Licence.

The application relates to the failure of the Premises Licence Holder to uphold the 'prevention of crime and disorder' licensing objective.

The application has been subject to formal representation and it is appropriate for issues relating to the 'prevention of crime and disorder' licensing objective to be properly considered.

### **1.1 Applicant Details:**

**Name:** Rother District Council (the Licensing Authority)

**Address:** Town Hall, Bexhill on Sea, East Sussex TN39 3JX

### **1.2 The Premises:**

Details of the premises subject of the application are as follows:-  
(Please see location plan and photograph in Appendices A and B)

The Chilli Tree Asian Cuisine, 1 King Offa Way, Bexhill-on-Sea, TN40 2UA

**Location:**

The premises is situated at the north east corner of the King Offa Way / London Road junction.

**Description:**

An Asian Cuisine Restaurant on the ground floor of a detached building located adjacent to a busy traffic junction.

**Existing Licences:**

05/00211/LAPRE

The premises has the benefit of a Premises Licence which authorises the sale / supply of on-sales of alcohol between defined hours; restricted to customers taking a table meal. (Please refer to the copy of the Premises Licence in Appendix D, page 38).

The Premises Licence Holder is Chilli Tree Asia Cuisine Limited and at the time of the application Mr Saleh Uddin is the sole director.

Mr Saleh Uddin is the Designated Premises Supervisor responsible for alcohol sales.

**2. The application for Review**

On the 3 April 2018 the Council's Licensing Team on behalf of the Council in its capacity as the Licensing Authority made an application (under Section 51 Licensing Act 2003) for a Review of the Premises Licence on the grounds that the 'prevention of crime and disorder' licensing objective is not being met.

The full details of the application and relevant supporting information can be found at Appendix C and D; however, in summary, the grounds for Review are:

- a) Mr Uddin has demonstrated on two separate occasions, three months apart that he has failed to carry out the required checks to verify that his employees have a right to reside and appropriate permission to work in the UK.
- b) Mr Uddin failed to apply for a Child Employment Licence for a child working on his premises.

The applicant therefore, invites the General Licensing Panel to consider the revocation of the Premises Licence.

The application has been subject to the usual consultation and public advertisement.

**3. Relevant representations of interested parties**

There were no representations from interested parties.

**4. Representations of responsible authorities**

Rother DC Planning	None received
Rother DC Env Health Noise Team	None received
Rother DC Env Health Food and Safety Team	None received
East Sussex Fire and Rescue Service	None received
Sussex Police	None received
ESCC Child Protection	None received
ESCC Public Health	None received
ESCC Trading Standards	None received
Home Office Immigration Enforcement	None received (Witness statement received to support the review application)

The Licensing Authority is the applicant; there were no representations from other responsible authorities. The Home Office Immigration Enforcement team provided a witness statement (please refer to Appendix D). On 5 May 2018, the Immigration Enforcement Team confirmed that a civil penalty of £15,000 was levied against the business as a result of employing illegal workers. There is a right of appeal.

## **5. Summary**

The Review application relates to failures by Mr Uddin to uphold the 'prevention of crime and disorder' licensing objective and the applicant invites the Panel to consider revocation of the Premises Licence.

## **6. Legislation**

The Licensing Act 2003 requires that the Council, as the local Licensing Authority, carry out its functions with a view to promoting the four Licensing Objectives:

- a) The Prevention of Crime and Disorder
- b) Public Safety
- c) The Prevention of Public Nuisance
- d) The Protection of Children from Harm

In exercising those functions, the Licensing Authority must also have regard to Guidance issued by the Secretary of State and its own Statement of Licensing Policy.

Under Section 181 and Schedule 5 (Part 3) of the Licensing Act 2003, rights of appeal exist, to the Magistrates' Court, against the decision of the Licensing Authority. Such appeal may be made on behalf of:

- a) the applicant;
- b) the holder of the Premises Licence; or
- c) any other person who made relevant representations in relation to the application.

## **7. Consideration**

When considering this Review application, under Section 52 Licensing Act 2003, the following options are available to the Panel:

- a) to modify the conditions of the Licence;
- b) to exclude a licensable activity from the scope of the Licence;
- c) remove the Designated Premises Supervisor;
- d) to suspend the Licence for a period not exceeding three months; or
- e) to revoke the Licence,

and for this purpose the conditions of the Licence are modified if any of them are altered or omitted, or any new condition is added.

## 8. Conclusion

Having considered the Review application, written and oral submissions made at the hearing the Panel shall determine the application.

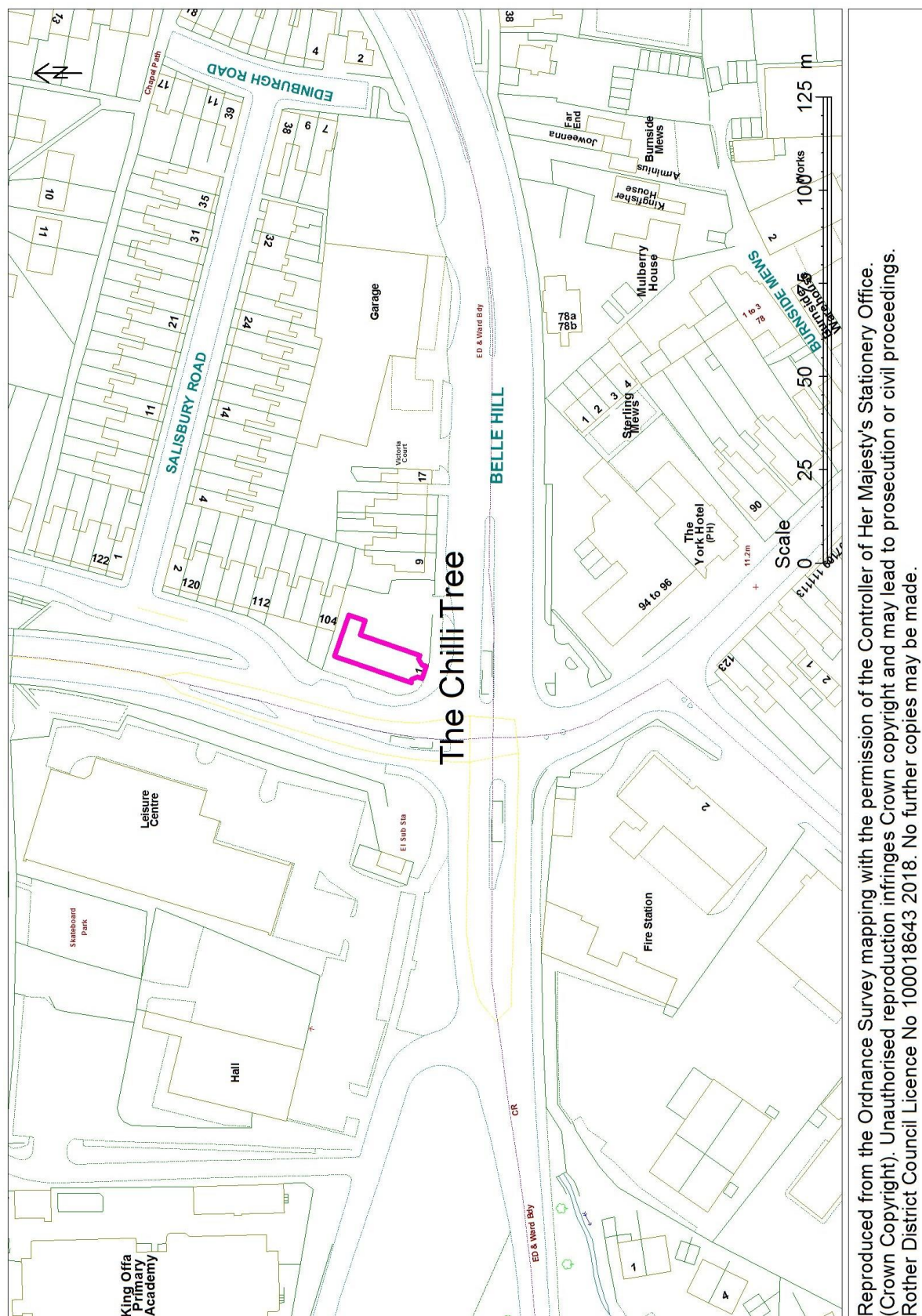
Malcolm Johnston  
Executive Director

### **Risk Assessment Statement**

The applicant and others party to the hearing have a right of appeal to the Magistrates' Court.

	<b>Page No.</b>
Appendix A: Map of the location	5
Appendix B: Photograph	6
Appendix C: Application for review	7 - 14
Appendix D: Application for review: supporting documents	15 - 47

### Map of the location



Photograph



Photograph 1: view of the premises from King Offa Way.



## Application for Review

## ROTHER DISTRICT COUNCIL

Application for the review of a premises licence or club premises certificate under the  
Licensing Act 2003

## PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.  
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I Melanie Robson, Licensing Officer

(Insert name of applicant)

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below

## Part 1 – Premises or club premises details

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>	
The Chilli Tree Asian Cuisine 1 King Offa Way	
<b>Post town</b> Bexhill-on-Sea	<b>Post code (if known)</b> TN40 2UA

<b>Name of premises licence holder or club holding club premises certificate (if known)</b>
The Chilli Tree Asian Cuisine Ltd

<b>Number of premises licence or club premises certificate (if known)</b>
05/00211/LAPRE

## Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

2) a responsible authority (please complete (C) below)

☒

3) a member of the club to which this application relates (please complete (A) below)

☐

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title  
(for example, Rev)

**Surname**

**First names**

**I am 18 years old or over**

Please tick ✓ yes

☒

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

**Name and address**

**Telephone number (if any)**

**E-mail address (optional)**



**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

<b>Name and address</b> Melanie Robson Licensing Officer Rother District Council Town Hall Bexhill-on-Sea TN39 3AN
<b>Telephone number (if any)</b> 01424-787528
<b>E-mail address (optional)</b> <a href="mailto:melanie.robson@rother.gov.uk">melanie.robson@rother.gov.uk</a>

**This application to review relates to the following licensing objective(s)**

- |   |                                     |
|---|-------------------------------------|
|   | Please tick one or more boxes ✓     |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety                        | <input type="checkbox"/>            |
| 3) the prevention of public nuisance    | <input type="checkbox"/>            |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

**Please state the ground(s) for review (please read guidance note 2)**

On Saturday 27 January 2018, in my capacity as a Licensing Officer for Rother District Council, I accompanied Officers from Home Office Immigration Enforcement, who executed a warrant under the Immigration Act 1971 at the Chilli Tree Asian Cuisine restaurant in Bexhill-on-Sea.

During this operation, two illegal workers were found working in the premises. I also saw a young age female member of staff standing in the bar area of the restaurant. She was identified as E-MP, with a date of birth of 21.03.02 showing she was aged 15. She informed me that she was employed as a waitress. A subsequent check with the Education, Support, Behaviour and Attendance Service (ESBAS), confirmed no application had been made for a Child Employment Licence, in respect of this individual or any other, at this premises.

The visit on 27 January 2018 was conducted following a similar operation carried out by Sussex Police's Operation Discovery Team, whose Officers had visited the premises on 18 October 2017. During that visit, three males were encountered and checked through Home Office systems. All three admitted that they had no leave to reside legally in the UK, and that they were working illegally. It is noted that one of these males was also encountered during the Immigration Enforcement visit on 27 January 2018.

Consequently, I make application for a review of the Premises Licence under Section 51 of the Licensing Act 2003, on the grounds of Prevention of Crime and Disorder and the Protection of Children From Harm. Of particular concern are the repeat offences identified during two enforcement operations carried out just three months apart, and the owner and licence holder's failure to abide by laws relating to the employment of foreign nationals and that of school age children.

**Please provide as much information as possible to support the application (please read guidance note 3)**

**Sussex Police Operation Discovery Visit 18.10.17**

On 18 October 2017, Officers from Sussex Police's Operation Discovery team visited The Chilli Tree Asian Cuisine restaurant at 15:00 hrs. The front entrance of the premises was locked and Police Officers therefore entered via the kitchen door. They encountered three males; two of whom were cooking in the kitchen, and the third, who confirmed he was also employed as a cook, was located on the first floor of the premises. The individuals were checked through Home Office systems, which disclosed the following:-

- M A K , a Bangladeshi national, had no permission to work and no legal basis to remain in the UK. He was also an absconder from immigration and he remains detained by Immigration pending removal from the UK.
- R A , a Bangladeshi national, had no permission to work in the UK and had exceeded the time limit of his visa. He escaped through the rear door of the premises and has been circulated as a wanted absconder on Police systems.
- S A , a Myanmar national, had no permission to work in the UK and, whilst not detained, was informed that he is not permitted to work.

Mr Saleh Uddin, the owner, premises licence holder, and sole director of Chilli Tree Asian Cuisine Limited, was not present at the time officers entered the building. However, he arrived about an hour later, whereupon he was interviewed and made aware that he should not hire illegal workers and must conduct right to work checks.

(Submitted in evidence are copies of witness statements from PS Christopher Varrall, PC Mark Charlton and PO Amanda Snashall.)

**Immigration Enforcement Visit 27.1.18**

Following the above operation, it was recommended that Immigration conduct an enforcement visit to apprehend R A , who had absconded from the address. Home Office Immigration Enforcement officers therefore visited the premises at 18:25hrs on 27 January 2018, to execute a warrant under the Immigration Act 1971.

Mr Saleh Uddin, the owner of the business, was present throughout this operation, during which two illegal workers were encountered working in the kitchen area:-

- S A , the Myanmar national who had previously been identified as having no right to work on 18 October 2017, was again informed that he should not work in the restaurant and was escorted from the premises.
- F A , a Bangladeshi national, had no permission to work in the UK and was arrested by officers and taken to his home address. He was subsequently placed on immigration bail pending his on-going case with the Home office.

At the close of this operation, Mr Uddin was served with a Referral Notice advising him, as the owner of the premises, that he faced a potential fine for hiring two illegal workers. This could be for up to a maximum of £20,000 per employee.

(Submitted in evidence are copies of an email from Luke Dartnall, HM Inspector of Immigration Enforcement, summarising the events which took place during both the above visits, together with witness statements from Immigration Officers, Rachel Doherty, Ian Britton and Maria Cox.)

Statements made by Mr Uddin to Police and Immigration Officers during both operations appear to indicate that the illegal workers encountered working in his kitchens were being paid a disparate

level of remuneration for the tasks being undertaken. None appeared to be receiving the national minimum wage.

### **Child Protection Concerns**

During the enforcement visit which took place on 27 January 2018, Immigration Officers who had already checked the details of all employees present, drew my attention to two female employees standing in the bar area of the restaurant; one was aged 15 and the other aged 17. A brief conversation with them confirmed that they were employed at the restaurant as waitresses, and were responsible for delivering food and soft drinks to tables. They advised me that they had been instructed to call an adult member of staff should an order be placed for alcoholic beverages.

The 15 year old, (E-MP, DOB 21.03.02) was present throughout the enforcement operation, which concluded at 19:30hrs. Section 18 of the Children and Young Persons Act 1933 as amended, states that **no child shall be employed before seven o'clock in the morning or after seven o'clock in the evening on any day.**

I consequently passed the child's details to a member of the Education, Support, Behaviour and Attendance Service (ESBAS), who are responsible for issuing Child Employment Licences in East Sussex. ESBAS's email dated 6 March 2018 confirmed that no work permit requests for the employment of children from East Sussex had been received in relation to The Chilli Tree restaurant; on behalf of E-MP or any other child.

On 13 March 2018, ESBAS advised me by telephone that Mr Uddin had now made application for two Child Employment Permits: one for E-MP, and one for a young age male, SJF. Both permits have since been granted.

(Submitted in evidence are copies of: the email from ESBAS to RDC confirming their findings and action required from Mr Uddin; a letter from ESBAS to Mr Uddin; information from the ESBAS website confirming terms of child employment and providing the appropriate application form.)

## **Legislation**

### **Immigration**

Sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") and Sections 24 and 24B of the Immigration Act 1971 ("the 1971 Act") contain the UK's legislative scheme designed to prevent illegal workers from being employed in the UK. Section 15 of the 2006 Act imposes a civil penalty on businesses that employ someone who does not have the right to undertake work in the UK. A business can only escape penalty if it has complied with the document checks prescribed in the legislation. Section 21 of the 2006 Act created a further criminal offence for employers who knowingly employ an illegal worker.

The Immigration Act 2016 ("the 2016 Act") increased the penalty and widened the scope of the criminal offence of employing an illegal worker. The offence may now be committed by an employer who either knows, or has reasonable cause to believe, that a person is working without leave. It applies to employers who employ staff under a contract of employment, service or apprenticeship, whether expressed or implied, and whether oral or in writing.

You will commit a **criminal offence** under section 21 of the 2006 Act, as amended by section 35 of the Immigration Act 2016, if you **know or have reasonable cause to believe that you are** employing an illegal worker. You may face up to 5 years' imprisonment and/or an unlimited fine.

### **Child Employment**

Section 21 of the Children and Young Persons Act 1933 as amended, provides that, if a person is employed in contravention of section 18 of the Act, or the provisions of the byelaws made thereunder, the employer and any other person (other than the person employed) to whose act or



default the contravention is attributable, shall be liable on summary conviction to a fine not exceeding level 3 of the Standard Scale (£1000).

Section 559 of the Education Act empowers a Local Authority to prohibit or restrict the employment of children, and any person found guilty of an offence under this section shall be liable to a fine (as above) and/or up to one month in prison.

<https://www.eastsussex.gov.uk/media/7517/child-employment-a5.pdf>

It is the employer's legal responsibility to apply for an Employment Card within 4 days of the start of employment. The parent or carer must also sign the form to confirm they are happy for the child to work. NB: the Association of British Insurers have stated that unless a child is registered with their Local Authority they may not be included under the Employers Liability insurance.

#### **S182 Licensing Act 2003 Guidance**

Section 182 of the Licensing Act 2003 provides Local Authorities with guidance in relation to the discharge of their functions under the Act. Revised Guidance issued in April 2017 states (under para 11.27) that there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These include the use of the licensed premises for **employing a person who is disqualified from that work by reason of their immigration status in the UK.**

Para 11.28 continues: 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.

#### **Conclusion**

Mr Saleh Uddin is the sole Director of Chilli Tree Asia Cuisine Limited, and the Premises Licence holder for this restaurant. He has demonstrated on two separate occasions, three months apart that he has failed to carry out the required checks to verify that his employees have a right to reside and appropriate permission to work in the UK. Statements made to both Police and Immigration Officers indicate he was well aware of the regulations and continued to flout them.

Mr Uddin's failure to apply for a Child Employment Licence, on at least two occasions, indicates a further disregard for the law. Without this safeguard in place, it is not known whether other legal restrictions, for example limiting the number of hours that can be worked, particularly during term time, would have been upheld.

Given the serious nature of the above allegations, and Mr Uddin's apparent proclivity for repeat offences, I ask that the Government Guidance issued under the Licensing Act be applied, and the Premises Licence for the Chilli Tree Asian Cuisine restaurant be considered and revoked.

Have you made an application for review relating to the premises before

Please tick ✓ yes

☐

If yes please state the date of that application

Day    Month    Year

1	1	1	1	1	1	1	1
---	---	---	---	---	---	---	---

**If you have made representations before relating to the premises please state what they were and when you made them**

Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☐

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date 3 April 2018

Capacity **Licensing Officer**

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 6)

Melanie Robson  
Licensing Officer  
Rother District Council  
Town Hall

**Post town**  
Bexhill-on-Sea

**Post Code**  
TN39 3JX

**Telephone number (if any)** 01424 787528

**If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)** [melanie.robson@rother.gov.uk](mailto:melanie.robson@rother.gov.uk)

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

## Application for Review Supporting Documents

## LIST OF ATTACHMENTS

ITEM	DATE
Statement from PS Christopher Varrall, Discovery Team	26.10.2017
Statement from PC Mark Charlton, Discovery Team	29.10.2017
Statement from PO Amanda Snashall, Discovery Team	19.10.2017
Email from Luke Dartnall, HM Inspector Immigration Enforcement	01.02.2018
Statement from Rachel Doherty, Immigration Officer	01.02.2018
Statement from Ian Britton, Immigration Officer	27.01.2018
Statement from Maria Cox, Assistant Immigration Officer	27.01.2018
Email from Eileen O'Sullivan, Administrative Support Officer ESBAS	06.03.2018
Letter from ESBAS to Mr Uddin	20.02.2018
Guide to Child Employment (3 pages from ESCC website)	
Premises Licence for The Chilli Tree Asian Cuisine	
Companies House details relating to Chilli Tree Asia Cuisine Ltd	