MINUTES
of the
LICENSING COMMITTEE
HEARING
Held remotely on 4 May 2020 at 2pm
Present:
Councillor L.A. Mascot (Chair of Hearing)
Councillors, D.G. Jones, R.J. Lee and I.C. Roberts

1. **Apologies for Absence**
   
   There were no apologies for absence.

2. **Declarations of Interests**
   
   All Members were reminded to declare any Disclosable Pecuniary Interests (DPI) or other registerable interests where appropriate in any of the items of business on the meeting’s agenda, none were made.

3. **Minutes**
   
   The minutes of the hearing held on 25th October 2019 were confirmed as a correct record and signed by the chair.

4. **Licensing Act 2003 - Application for a Review of a Premises Licence – Yasmin Indian Brassiere, Baddow Road, Chelmsford, Essex, CM2 7QE**
   
   The Committee considered an application for a review of a premises licence in respect of, Yasmin Indian Brassiere, Baddow Road, Chelmsford, Essex, CM2 7QE. The applicant had been made by Essex Police as a responsible authority on the grounds of the prevention of crime and disorder.

   It was noted by the Committee that there were five options namely;

   1. To modify the conditions of the licence either permanently or for a period not exceeding three months.
   2. To exclude a licensable activity from the scope of the licence, either permanently or for a period not exceeding three months.
   3. Remove the Designated Premises Supervisor
   4. To suspend the licence for up to three months.
   5. Revoke the Licence
The following parties attended this hearing and took part in it:

**Applicant**
- Mr William Moody, Essex Police Licensing Officer
- Mr Jack Davis, Home Office

**Licence Holder**
- Mr Muhammed Abdul Haque, Licence Holder
- Mr Marcus Croskell, Legal Representative

The Chair advised that the written representations had been read and considered by the members of the Committee in advance of the meeting. The Chair invited the applicant to introduce their application.

The Chair invited the applicant (Essex Police) to introduce their case. Mr Moody informed the Committee that the majority of their reasoning for reviewing the licence was detailed in their original submissions. The Committee heard that back in January 2020, an ambulance crew attended a call at the restaurant where an employee said they were being paid £3 per hour and being made to work in unsanitary conditions and experiencing verbal and physical abuse. This led to a multi-agency raid in February which found 4 males working illegally who were arrested on immigration offences. The Licence holder informed them that they were not working and were friends or family visiting the restaurant. Mr Moody stated Essex Police did not believe this explanation, due to one being in the kitchen with an apron who tried to flee, another in the kitchen cooking, another leaving the staff toilets and another in a waiter’s uniform. The Licence holder was unable to provide any right to work documents and claimed that one staff member had started that day. Mr Moody stated this was not the case as he had been the male attended the previous month by the ambulance crew.

Mr Moody also stated that the licence holder claimed to have only been in control of the business for four months. He said that this was not the case however, due to being the licence holder for 14 years and the mortgage holder for 11 years. The Committee were also informed of a separate failed immigration visit at the premises in 2014 where one of the offenders from 2020 was also found working illegally then. Essex Police felt this demonstrated illegal working over a long period of time and along with the conditions reported, was an example of modern-day slavery. Essex Police also stated that the suggested transfer of the licence to the head waiter should not influence the Committee’s decision. This was due to the head waiter having worked at the premises for a number of years and therefore they could not be satisfied anything would change.

Mr Moody referred the Committee to the S182 guidance which stated immigration crime should be considered especially seriously in the first instance and highlighted this was the second incident. He stated that Essex Police were requesting a revocation which would send a strong deterrent to employers and those seeking to work illegally.
At this point in the meeting, the Chair invited the Licence holder to present their case. Mr Croskell, the Licence holder’s legal representative addressed the Committee. He informed the Committee that the key points of their case were included in the documents provided. He asked the Committee to refer to these documents whilst considering the case. Mr Croskell informed the Committee, that despite Essex Police asking them to not consider a transfer to the head waiter, that they should consider this an option. He felt that this was an appropriate response and one supported by Oceania, the company that took control of the business in October 2019. He stated that Mr C was an UK national, of good character with no offences under the Licensing Act. He also stated he had worked in hospitality for a long time, had recently attended a course and was a sensible replacement for Mr Haque who was in his 60’s and approaching retirement. In response to the claims made by Essex Police, the Committee heard that these had been denied and contested by Mr Haque and he had not been prosecuted.

The Committee heard that systems at the premises for recording right to work statuses were being amended to prevent future issues and that all future documents would be retained correctly. He also noted that since being taken over by Oceania, only four payrolls had been run and systems were still being put in place at the time of the raid. Mr Croskell also reminded the Committee that they could remove Mr Haque as the Designated Premises Supervisor but did not need to name a replacement at the hearing, this could be done at a later date.

Mr Croskell asked the Committee to question and consider the claims made by Essex Police of illegal working at the premises for a six-year period. He argued that this was a quantum leap between two individual incidents in 2014 and 2020 and should not be taken into account. He also raised that no evidence had been presented to the Committee regarding the 2014 incident. Mr Croskell also queried the example of modern-day slavery raised by Essex Police and said it was inflammatory and would not survive a criminal trial. He said the evidence was weak and no strong proof had been presented to the Committee of modern-day slavery taking place.

In summary, the Committee heard that a change of DPS would advance the Licensing objectives appropriately. He also reminded the Committee that no other offences had been committed by the Licence holder and that with the recent new owners and proposed change of DPS the business would continue to run successfully.

In response to questions from the Committee;

- Mr Croskell stated that the person named on companies house as an owner of Oceania was a different person to the licence holder.
- Mr Haque stated that the head waiter being proposed as the new DPS had worked at the restaurant for more than three years.
- Mr Haque stated he had been on holiday when the incident happened in 2014.

The Chair informed those present that the Committee would now retire to deliberate on the matter. It was noted that unlike previous meetings where everyone was present, this would be held remotely and a decision would be provided to the relevant parties via email within a few days. The decision made is detailed below and was circulated to the relevant parties.

The Committee retired at 2.46pm to deliberate on the matter.
The Committee gave careful consideration to the review application by Essex Police and to the relevant representations both written (including the submissions set out in skeleton argument submitted by the licence-holder’s counsel) and made in the course of the virtual hearing.

**RESOLVED** that the Director of Public Places be authorised to revoke the premises licence pursuant to section 52 (4) (e) of the Licensing Act 2003 as it is appropriate for the promotion of the licensing objectives (in this case, the prevention of crime and disorder)

**Reasons for Decision**

1) The Committee noted that the licence holder, Mr Haque, denies that each of the four persons found on the premises by the Immigration Compliance and Enforcement Team (ICET) and others on the 7th February 2020 were employed by him. Instead, Mr Haque asserts that they were on the premises for the various reasons set out in the letter from his solicitors, Winston Rose Solicitors, dated 21 February 2020 and were not illegal workers.

2) Notwithstanding Mrs Haque’s denial and the explanations put forward by him for the individuals being on the premises, the Committee is satisfied, on the balance of probabilities, that the four individuals in questions were illegal workers employed at the premises (and had, in fact, been so employed for a period of time) - and that the prevention of crime and disorder licensing objective is therefore engaged. In reaching this finding the Committee has had particular regard to the following:-

(i) The disclosure made by one of the individuals (Ali) to the Ambulance Service on 14 January 2020 (to the effect that, among other things, he was working at the premises and being paid £3 per hour) which had led to the unannounced visit to the premises by the ICET and others on 7th February 2020. The Committee noted that no witness statement from a member of the Ambulance Service staff who had attended Ali had been provided with the Police review application. However, there was no reason to question the veracity of the Ambulance Service’s report that Ali had made this statement to them. Furthermore, the circumstances in which Ali’s statement had been made to them indicated that it was probably truthful.

(ii) The evidence contained within the witness statements of the Immigration Officer, Police Licensing Manager, and Police Licensing Officer. (Appendices C-D of the Review application). The Committee noted that (among other things) one of the individuals (Khan) was encountered cooking in the kitchen wearing a chef’s style uniform; another individual (Miah) was wearing an apron and attempted to flee the premises. The third individual (Ali) was encountered in the bar area dressed as a waiter. The fourth individual (Haque) was seen to enter the staff toilet from the kitchen area and then re-enter the kitchen.
(iii) It strained credibility for Mr Haque to, in effect, assert that it was by sheer coincidence that at the precise moment of the ICET visit the four individuals in question were simultaneously on the premises - all of whom appeared by reason of their physical location / behaviour (and in the case of two of them, their attire) to be working – but who were not, for a variety of different explanations given by Mr Haque, actually working.

(iv) The admissions made by Miah and Ali to the immigration enforcement officers following the visit, namely that they had been working at the premises.

(v) The report by the Ambulance Service staff who responded to the call out to Ali on 14 January 2020 to the effect that Ali was living in dirty accommodation above the premises with 3 – 4 mattresses per bedroom with 4 bedrooms all similarly equipped. Whilst this evidence concerning the accommodation set up by no means conclusively established that illegal workers were being kept at the premises, the Committee considered that, taken with the other facts, it was consistent with and indicative of such.

The Committee considered the evidence summarised in (i) – (v) above to be compelling.

3) Having regard to his position in the business and his conduct / behaviour during and after the ICET visit, the Committee is also satisfied, on the balance of probabilities, that Mr Haque knowingly employed these four illegal workers.

4) The Committee takes the view that the employment of illegal workers is an extremely serious matter. In this regard, the Committee’s view is in line with the paragraph 11.27 of the revised Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (to which the Committee was required to have regard in determining review applications).

5) In his submissions Mr Haque’s counsel had sought to rely on the case of R (on the application of Blackpool Council) v Howitt [2009]. The Committee’s legal adviser (Mr William Butcher) had advised the Committee during the deliberations stage that this case was not authority for the proposition that there had to be (or should normally be) repeat failures / breaches to warrant revocation of a licence. Furthermore, para 11.28 of the section 182 Guidance states that in the case of serious criminal activity (including employment of people disqualified from work by reason of their immigration status) revocation of the licence – even in the first instance – should be seriously considered. In any event, the Committee the considered that this was not a “one off” instance of illegal employment, but rather a case of multiple contraventions i.e. four individuals had been illegally employed and over a period of time.

6) Each review application, including the steps (if any) considered appropriate to take in order to promote the licensing objectives, fell to be determined on its own facts. The illegal employment of these four individuals on the premises was, by itself, an extremely serious and disconcerting incident justifying revocation. In the view of the Committee, the only appropriate step to take in this case was to revoke the licence.
(2pm to 2.46pm)

The meeting closed at 2.46pm.

Chair