

**MINUTES**

of the

**LICENSING COMMITTEE HEARING**

held on 14 March 2024 at 11:36am

Present:

Councillor R. Lee (Chair of Hearing)

Councillors D. Clark, A. Davidson, and P. Wilson

1. **Apologies for Absence**

No apologies for absence were received.

2. **Declaration of Interests**

All Members were reminded to declare any Disclosable Pecuniary interests or other registerable interests where appropriate in any items of business on the meeting's agenda.

3. **Minutes**

The minutes on the 12<sup>th</sup> December 2023 meeting was approved as a correct record.

4. **Licensing Act 2003 – Application for a review of a Premises Licence – 122 Springfield Road, Chelmsford, CM2 6LF**

The Committee considered an application for a review of the premises licence relating to Mosaic, 122 Springfield Road, Chelmsford, Essex, CM2 6LF pursuant to section 51 of the Licensing Act 2003 made by the Home Office. The application was made on the grounds of the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.

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 the hearing and took part in it:

**Applicants**

**Home Office** Mr Davis

**Licence Holder**

Mr A Killic (manager of Mosaic and the owner of Mercimek Ltd)

Mr M Killic (licence holder and designated premises supervisor (DPS) of Mosaic)

Mr Hopkins (representative)

**Supporting Application**

**Essex Police:** Ronan McManus

The Chair advised that the written representations had been read and considered by the Committee in advance of the meeting. It was also advised that there had been additional emails sent just before the meeting in which was confirmed received by everyone present.

The Chair invited the Home Office, who had applied for the review to present their case to the Committee. They informed the Committee that they visited the premises on 29<sup>th</sup> June 2023, after receiving intelligence of illegal working taking place. They had found two alleged illegal workers in the premises, one in the kitchen behind the "Just Eat" terminals / staff area and the other also in the kitchen, washing dishes. They had also discovered the latter's belongings in one of the rooms downstairs (in the basement) The room in question was one of two rooms in the basement which appeared to be used as living accommodation. It was also advised that there had been a recent pattern of offences in relation to illegal employment throughout areas in Essex.

The Committee were informed that revocation of the premises licence had been sought to prevent illegal working taking place in licensed premises and to protect children from harm. The Home Office officers stated that the guidance detailed that in a case such as this, revocation should be considered.

Essex Police, who had supported the application, informed the Committee that they would have also requested a review if the Home Office had not done so and supported the request for a revocation. It was stressed that illegal employees would have not likely have access to worker's rights and usually received low minimum wage. It was also noted that this could be a form of trafficking. There should have been due diligence on the licence worker and that the procedures should be robust and enshrined.

The Chair invited the licence holder, the company owner, and their representative to address the Committee. The representative introduced the manager and the licence holder of Mosaic. It was advised that the company owner had a chain of takeaway premises including in Braintree, Basildon, and Havering, and Members were advised of their spotless record with the authorities and have not received any civil penalties before. It was noted that the visit by the Home Office officers commenced in 29<sup>th</sup> June 2023 but it had taken this long to apply for a review. It was reiterated that the licence holder and the company holder did not employ the alleged illegal workers, nor did they offer any employment.

It was repeated that the one of the alleged illegal workers was a relative of the licence holder and reported to be feeling lonely and bored thus went into the restaurant. It was stated that they were only charging their mobile phone by the "Just Eat" area and talking to the staff but otherwise not doing any work. This was reiterated by the

manager of Mosaic as well as the licence holder. It was also advised that there was no evidence of the alleged illegal worker to be taking orders for delivery. It was also stated that the licence holder had offered Home Office CCTV footage showing evidence that there was no illegal work however it was alleged that this had been declined.

Regarding the other alleged illegal worker, it was advised that the licence holder had seen their asylum seeker card and was aware that they could not take on neither paid nor unpaid employment. It was noted that they were found homeless and one of the staff employed in Mosaic allowed them a place to stay in the premises and to have free food. It was suggested that this alleged illegal worker might in fact have been washing his own dishes when encountered by ICE officers. The member of staff who had allowed this individual to stay on the premises was reported to have been dismissed due to this.

Essex Police then asked if the CCTV had been retained. The licence holder representative advised that the CCTV footage was only stored for 28 days and, since they had only heard of the application to review the premises in January, the footage was now lost. Essex Police then asked the licence holder which other premises they were the designated premises supervisor for. The representative reiterated that the licence holder also was the designated premises supervisor for premises in Braintree, Basildon, and Havering.

Essex Police, turning to the Home Office officer, then asked if these premises had not come any other notice of civil penalty as advised by the representative earlier. The Home Office officer advised that there had also been an arrest of an illegal worker in the Turkish restaurant in Braintree which was also under the licence holder.

The Council's Licensing Lead Officer then advised that the team had been contacting the licence holder regarding a pavement licence as it was observed that chairs and tables were placed outside the premises. The representative and licence holder denied that there were chairs and tables on the pavement outside the restaurant however this had been refuted by the Licensing Lead Officer. The representative and the licence holder advised that they would look into the pavement licence.

The Chair then invited the Committee Members to ask questions. In response to a query regarding the decision for the Home Office to inspect the premises, it was advised that allegations would be received including concerns raised on Gov.uk website, and social intelligence would then assess these allegations. These would then be sent to operational officers who queried with the police and local authorities. There would also be a series of checks and balances to ensure that every decision made was proportional.

The Chair then asked regarding the mobile phone being charged as this detail was not mentioned in the application from the Home Office. It was advised by the representative and the licence holder that the Home Office did not speak to them about it. The Chair then asked the Home Office officer if there was a legal requirement to retain right to work records. The Home Office officer stated that it was advisable for right to work checks to be retained as these could be used as defence on civil penalties.

With reference to the proposed conditions that were sent before the meeting, the Chair then asked both the Home Office and Essex Police if they would agree to these. Both had advised that the conditions were non-descriptive and that these would be required anyway as it would repeat existing legislation. The Home Office officer emphasised that it would be up to the final decision of the Chair.

In response to the questions from the Council's legal advisor, the Home Office officer advised that there was no mention of the mobile phone charging in the interviews which were facilitated in Turkish, the alleged illegal worker's mother tongue. The representative had reiterated that this matter was not asked on the interviews and emphasised that the alleged illegal worker just arrived in the UK as an asylum seeker and was under a lot of stress. It was also reiterated that the Home Office was offered to review CCTV footage but refused. The burden of proof was on the Home Office to prove illegal employment in the premises.

At this point of the meeting, the Committee retired to deliberate. It was noted that due to the remote nature of the meeting, the decision would be circulated to all parties within a few working days via email.

The Committee gave careful consideration to the relevant representations both written and made in the course of the remote hearing.

**RESOLVED** that having regard to all the circumstances including the evidence before it, the premises licence be revoked pursuant to section 52 (4) (e) of the Licensing Act 2003 as it is appropriate to take such step for the promotion of the licensing objectives (in this case, the prevention of crime and disorder).

### **Reasons for decision**

1) Notwithstanding the licence-holder's denial and the explanations put forward by him for the two individuals in question being on the Mosaic Restaurant premises, the Committee was satisfied, on the balance of probabilities, that these two individuals were illegal workers employed at the premises at the time of the unannounced visit on the 29 June 2023 by officers from the Immigration, Compliance and Enforcement Team (ICE). In reaching this finding of fact deciding to revoke the licence the Committee has had particular regard to the following.

2) Individual A (a nephew of the licence-holder) had been encountered by ICE officers in a staff only area of the premises, namely the kitchen behind the "Just Eat" terminals (where live orders were processed). He denied being a worker and when interviewed by ICE officers in the course of the visit on the 29 June 2023 he claimed that he had only been at the premises on the day of the visit and was there because he was bored. The Committee noted that he had arrived in the UK illegally by small boat on 07 May 2023 and had made an application for leave to remain. Just two days before the hearing, the licence holder's agent had forwarded a signed witness statement from individual A dated 13 March 2023, to the effect that he had gone to the restaurant premises for company (he did not speak or understand English) and had been behind the "Just Eat" counter because he was charging his mobile phone and was also speaking to his uncle (the licence-holder) and other staff in the kitchen.

The Committee noted that this reference to charging his mobile phone etc had only been made two days before the hearing. No mention of the mobile phone had been made by individual A when he had been interviewed by the ICE officers at the time of the visit on the 29 June 2023. The Committee would have expected him to refer to the mobile phone at this stage. Furthermore, the interview had conducted in Turkish, which was individual A's language. The Committee struggled to understand why individual A was raising the mobile phone explanation so late in the day and this went to his credibility.

On balance, the Committee considered that, on the balance of probabilities, individual A was in the kitchen area of the premises because he was working.

3) Individual B had been encountered by ICE officers at the time of their visit on the 29 June 2023 in the kitchen, in the act of washing dishes. When interviewed by ICE officers in the course of the visit he denied being a worker and said that he was merely washing his hands. His personal belongings were found in one of the rooms in the basement of the premises. The room appeared to be used as living accommodation. The Committee noted that in the course of the hearing the licence-holder's agent (on behalf of the licence-holder) had stated that individual B had subsequently indicated that he had been homeless and had been given free food and accommodation for a couple of days by a member of the staff without the licence-holder or business owner's consent. Individual B may in fact have been washing his own dishes when encountered by ICE officers. The member of staff who had allowed this had since been dismissed.

The Committee noted that if individual B had in fact been washing his own dishes, then such explanation would conflict with his original explanation to the ICE officers on the 29 June 2023 – namely, that he was merely washing his hands. Furthermore, the Committee struggled to understand why individual B had not advanced this explanation when so interviewed. This issue went to credibility.

On balance, the Committee considered that, on the balance of probabilities, individual B was in the kitchen area of the premises because he was working.

4) Furthermore, it was not in dispute that at the date of the ICE officers' visit two individuals without the right to work (i.e. individual A and individual B) had both been encountered at exactly the same time in the kitchen area of the restaurant, where normally only staff would (and should) be present. Mere coincidence, whilst it could not be ruled out entirely, was unlikely. The Committee was inclined to the view that the simultaneous presence of these two individuals in the staff working areas was indicative of them working in the business.

5) The evidence that two rooms in the basement (which were initially found by ICE officers to be locked) appeared to be used as accommodation, with one of them containing the belongings of individual B by no means conclusively established on its own that one or more illegal workers were being accommodated at the premises. However, the Committee considered that, taken with the other facts, it was consistent with and indicative of such.

6) The Committee also noted and was inclined to give some weight to the fact that there had been an arrest of an illegal worker in the Turkish restaurant in Braintree which was also under the licence holder. However, this particular fact did not have

a determinative impact on the Committee's findings. The Committee would have reached the same finding (i.e. that individual A and individual B were working on the premises at the time of the ICE visit) irrespective of the incident at the Braintree restaurant.

7) The committee also noted and was inclined to give some weight to the fact that the unannounced visit by ICE officers to the restaurant on 29th June 2023 was based on intelligence that two individuals from Uzbekistan and Turkey were being employed illegally there, and upon the visit, a period after the information was given, individuals of these nationalities were found. While the committee considered that this could be a co-incidence, they concluded that on the balance of probability, it was likely not.

8) The Committee took the view that the employment of illegal workers was an extremely serious matter. The submissions made by the Home Office in its Premises Licence Review bundle at page 9 under "Outcome Sought" reflected the Committee's own views on the seriousness of employing illegal workers within the UK and the rationale for preventing and deterring such activity. The Committee was also mindful of paragraph 11.27 of the Licensing Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (to which the Committee was required to have regard when determining review applications).

9) The Committee had given consideration to the proposed conditions put forward by the licence-holder's agent as an alternative option to revocation. However, the Committee was of the view that revocation was the only appropriate course of action in this particular case.

(11:39 to 12:35)

The meeting closed at 12:35

Chair