

MINUTES

of the

LICENSING COMMITTEE HEARING

held on 22 January 2021 at 11am

Present:

Councillor L.A. Mascot (Chair of Hearing)

Councillors, A.E. Davidson, S. Rajesh and I.C. Roberts

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. None were made.

3. **Minutes**

The minutes of the meeting held 9 October 2020 were agreed as a correct record and signed by the Chair.

4. **Licensing Act 2003 – Application for a New Premises Licence – Yasmin Indian Brasserie, Baddow Road, Great Baddow, Chelmsford, CM2 7QE**

The Committee considered an application for a new premises licence relating to Yasmin Indian Brasserie, Baddow Road, Great Baddow, Chelmsford, CM2 7QE pursuant to section 17 of the Licensing Act 2003. The application was for the following licensable activities:

Live Music:

Thursday 20:00 – 00:00

Friday 20:00 – 00:00

Saturday 20:00 – 00:00

Recorded Music:

Monday to Saturday – 12:30 – 14:30 & 17:30 – 00:00

Sunday – 12:00 – 00:00

Supply of Alcohol:

Monday to Saturday – 12:30 – 14:30 & 17:30 – 00:00

Sunday – 12:00 – 00:00

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

1. Grant the application, on the terms and conditions applied for
2. Grant the application, on the terms and conditions applied for, modified to such extent as considered appropriate to promote the Licensing Objectives.
3. Refuse the application in whole or in part.

The following parties attended the hearing and took part in it:

Applicant(s) – Mr K Chowdhury
Mr M J Haque (Company Director)
Mr M Croskell (Solicitor)

Objector – Mrs R Savill (Essex Police)

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 case. The applicant was represented by Mr Croskell who introduced the application. Mr Croskell first invited the Committee to ask Mr Haque any questions they had as he could only attend the start of the hearing.

In response to questions from the Committee, Mr Haque stated that;

- The company had been passed down to him from his Father and he had taken full control in October 2020.
- He took care of the business on a weekly basis and visited every weekend when he was not required in his other role as a pharmacist.
- Mr Chowdhury was the day to day manager and had been the best placed staff member to take on the manager's position.
- He had always been around the business since a young age and therefore it had been appropriate for his Father to pass the business down.
- Since taking over responsibility, he had implemented other delivery services and when employing staff, CV's and right to work documents were all checked and recorded.
- The upstairs of the property was still rented out by his Father, but this was his only involvement with the business.
- Mr Chowdhury had undertaken internal training to assist with his promotion to Manager.

Mr Croskell informed the Committee that, Mr Chowdhury had passed the necessary qualifications to be a licence holder and had been a long established member of staff before his promotion to manager. Mr Croskell told the Committee that Mr M Haque's father had run the restaurant since 2006 before passing the business to the Oceania group in October 2019. It was noted that at the time of the unannounced visit to the restaurant premises by officers from Essex Police in early 2020 Mr M Haque was still reliant on his father who was managing the business day to day. The Committee heard that as a result of the raid and finding illegal workers the premises licence had been revoked. Mr Croskell stated that it was now for the Committee to decide whether the changes in management were now sufficient to meet the licensing objectives and permit the grant of a new licence. Mr Croskell

stated that his clients understood the concerns of Essex Police and that adequate changes had been put into place. It was noted that Mr Haque's father was not a shareholder in the business and only received a rental fee for part of the building, therefore he had now had no rights over the business. Mr Croskell stated that his clients fully understood that Mr Haque's father could have no involvement in the business and that they were happy to offer this as a condition on a new licence. The Committee heard that Mr Chowdhury would have full responsibility as manager for checking staff's right to work documents and that him and Mr Haque both had British passports. He informed the Committee that they were both of responsible standing and understood what they needed to do to meet the licensing objectives.

At this point of the hearing, the Chair invited Mrs Savill from Essex Police, to present their objection to granting the licence. The Committee were directed to the prior submission from Essex Police which detailed why they did not feel the licence should be granted. The Committee heard that Essex Police saw this as a paper exercise with the same individuals involved as when the raid took place in early 2020. The Committee was reminded that the initial review had been applied for, after four illegal workers were located on the premises and the details of the original review were included in their submission. The Committee heard it was the view of Essex Police, that Mr Haque Senior was still involved with the business and this was solely an attempt to allow him to continue in running the family business. Essex Police were of the view that if the licence was to be granted, then the employment of illegal workers would continue.

In response to questions from the applicant's solicitor, Essex Police stated that they did not have any evidence of Mr Haque senior currently working at the premises but they had serious concerns that he was still involved. Essex Police informed the Committee that with their concerns and previous knowledge, it was very difficult to feel that Mr Haque senior was not involved with the business at all, especially as the business had not been sold. Essex Police also stated that Mr Chowdhury, the new applicant had been at the premises for four years and it was difficult to accept that he had not been aware of the illegal workers previously.

In response to a question from the Committee, Mr Chowdhury confirmed that he held a personal licence from Tower Hamlets Council, which had been issued in July 2020.

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 in a few days. The decision made is detailed below and was circulated to the relevant parties.

The Committee gave careful consideration to the application and to (i) the relevant written representations (including the submissions set out in the skeleton argument submitted by the applicant's counsel, Mr Croskell, and the witness statements of the applicant, Mr Kabir Ahmed Chowdhury and Mr Muhammed Monjul Haque) and (ii) the representations made in the course of the virtual hearing. In determining the application, the Committee also had due regard to relevant provisions contained within the current statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003 ("the Guidance").

RESOLVED that it is appropriate for the promotion of the licensing objectives (in this case the prevention of crime and disorder) that the Director of Public Places be authorised to refuse the application, pursuant to section 18 (3) & (4) (d) of the Licensing Act 2003.

Reasons for Decision

1) *The Committee had regard to the fact that Essex Police had objected in strong terms to the application. Their concern was that the restaurant premises had a history of employing illegal workers and thus a history of undermining the crime and disorder objective (which includes the prevention of illegal working). Serious incidents of illegal working had resulted in the premises licence held by Mr Muhammed Abdul Haque (“Mr Haque Senior”) being revoked by the Licensing Committee on 05 May 2020. Essex Police submitted that notwithstanding the change in ownership of the restaurant business and the applicant, Mr Kabir Ahmed Chowdhury (“Mr Chowdhury”) having been appointed as the manager, the reality is that because of his (and Mr Muhammed Monjul Haque’s) historic connections to the restaurant business and personal links to Mr Haque Senior this change would be no more than a “paper exercise” - with actual management of the premises remaining unchanged. Mr Haque Senior would, they argued, continue to operate the restaurant in the same manner ~~has~~ as he had done for years. It was their view (expressed in para 2.11 of their written representations) that the employment of illegal workers would continue if the application were to be granted.*

The Committee was conscious of its duty to consider each licensing application on its own merits and that its determination in any given case should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. The Committee was, however, also required to look to Essex Police as the main source of advice on crime and disorder (para 2.1 of the Guidance). Insofar as, and to the extent that, Essex Police’s concerns were evidence based, the Committee was bound to give them due weight.

2) *The premises licence which had been held by Mr Haque Senior had been revoked by the Committee in May 2020 (following a review hearing) because of serious incidents of illegal working which had come to light in the course of an unannounced visit to the restaurant premises by officers from Essex Police and the Immigration Compliance and Enforcement Team on 07 February 2020. The Committee’s decision (including its findings and reasons) to revoke this licence was set out in its formal decision letter dated 05 May 2020 and Essex Police had made reference to this decision letter in their written submissions (at Exhibit RS/1). The Committee, at the time of the review, considered the illegal employment of the four individuals in question to be an extremely serious and disconcerting matter. The Committee’s view on this had not changed. This had not been a case of a one off isolated incident of the hiring of illegal workers, but rather a case of multiple and sustained incidents over period of time. Mr Haque Senior’s conduct in hiring these illegal workers had, in the Committee’s opinion, been both appalling and exacerbated by his denials at the review*

hearing that the hiring of illegal workers had in fact taken place, when the evidence of such was compelling.

3) The Committee took into account the fact that the restaurant business was and (crucially) still is, a family owned and run business. Mr Haque Senior was, in effect, the owner and manager of the restaurant business from 2006 until October 2019 when Oceana Foods Limited (of which his son, Mr Haque Junior, is a director) took over ownership of the restaurant business. The Committee noted that notwithstanding this transfer of the formal ownership of the business in October 2019, Mr Haque Senior had (according to Mr Haque Junior) continued to control and manage the business, until the events of February 2020 which led to revocation of the licence.

4) The Committee took into account the fact that the applicant, Mr Chowdhury, was a longstanding employee of the restaurant business and had been employed as a head waiter during the time that Mr Haque Senior had been the proprietor and operational manager of the business. The Committee noted that a letter in support of the application from Mr Haque Junior (dated 21 December 2020) made reference, among other things, to Mr Chowdhury's "loyalty and hard work" while working at the business to the business. It was reasonable to assume that this reference to Mr Chowdhury's loyalty necessarily included, by implication, his loyalty to Mr Haque Senior. The Committee had concerns relating to the fact that Mr Chowdhury had been employed at the restaurant (and necessarily had close links with Mr Haque Senior) during the historic and sustained incidents of hiring of illegal workers. The Committee's concerns were amplified by the factual background and surrounding circumstances to that illegal working which were described in the submissions of Essex Police at the review hearing which were appended to the Police's submissions at Exhibit RS/1. The restaurant premises were a relatively small workplace and at the time of the enforcement visit on 05 February 2020 there were found to be four illegal workers employed on the premises. One had been dressed as a waiter; the other three were working in the kitchen. There was no evidence to suggest, nor was it the Committee's intention to imply, that Mr Chowdhury had been party to, or instrumental in, the hiring of illegal workers. However, having regard to all the circumstances, the Committee could not be satisfied that Mr Chowdhury had not been aware of - or at least had suspicions - that the employment of illegal workers was taking place on the restaurant premises. Nor (because of his historic close connections with the business and Mr Haque Senior) could the Committee be confident that, if Mr Chowdhury were licence holder and there was a recurrence of illegal working, he would be sufficiently independent to take action and report the same to the authorities.

5) Mr Haque Junior had told the Committee that he had grown up in his father's restaurant business and when he (through Oceana) had taken over the business in October 2019 he had relied on (and had trust and confidence in) his father which he subsequently realised was misplaced. Despite this explanation, the Committee harboured concerns over the fact that Mr Haque Junior had, nonetheless, been the owner of the restaurant business during

the period 01 October 2019 – February 2020, when employment of illegal workers was taking place on the restaurant premises. As was the case with Mr Chowdhury, there was no evidence to suggest - and nor was it the Committee's intention to imply - that Mr Haque Junior had been party to or instrumental in the hiring of illegal workers. Nonetheless, Mr Haque Junior's ownership of the business during this 4 month period coupled with the fact that, notwithstanding the transfer of the business, the reality was that his father, Mr Haque Senior, was in operational control of the restaurant business during that time could not be completely disregarded. Having regard to all the circumstances, the Committee could not be satisfied that Mr Haque Senior had not been aware of - or had suspicions - that the employment of illegal workers was taking place on the restaurant premises. Furthermore, the Committee noted that Mr Haque Junior had his own (Pharmacy) business to attend to and whilst he said that he would pop into the restaurant when he was not working and at weekends it was clear that he was (as he described himself) a "silent owner" of the business and would be relying on Mr Chowdhury. In addition, the Committee noted that Mr Haque Senior was unable to say who (if anyone) was living in the rooms above the restaurant premises, other than that his father, Mr Haque Senior remained the owner / Landlord of the property and lets the rooms as a separate business, albeit that it was common practice for rooms upstairs to be used as sleeping accommodations for waiters and other restaurant staff who had been recruited from areas such as London. On balance, the Committee was not satisfied that Mr Haque Junior had a full understanding or proper involvement in the operation and running of the restaurant business of which, since 01 October 2019, he was (via Oceana Foods Limited) the formal owner.

6) *The Committee did not accept Essex Police's contention (see 1. above) that the employment of illegal workers would continue if the application were to be granted. However, having regard to all of the circumstances (including historic illegal working) the Committee considered that there was a risk that there might be a recurrence of the hiring of illegal working at the premises. This was because the Committee was not satisfied, on the balance of probabilities, that there had in reality been a genuine transfer in the management and control of the restaurant business by Mr Haque Senior and that Mr Chowdhury and / or Mr Haque Senior were not nominals. Furthermore, because of their historic connections to the business and to Mr Haque Senior the Committee could not be satisfied that Mr Chowdhury or Mr Haque Junior would be sufficiently independent of Mr Haque Senior to challenge / report to the authorities any hiring (or suspected hiring) of illegal workers at the restaurant premises.*

7) *The Committee did not consider that its concerns could be adequately met (i.e. the licensing objective satisfied) by granting a licence to the applicant with a condition attached to the effect that Mr Haque Senior was not to be employed in any form in the restaurant business. Realistically, a condition of this kind would (in all the circumstances) be virtually impossible to police effectively and therefore enforce.*

8) *To conclude, in the light of the Committee's findings and reasons set out in 1) – 7) above the Committee does not consider that there has been a sufficient change in the management and control of the restaurant business to enable the Committee to be satisfied that the promotion of the licensing objectives (in particular, the prevention of crime and disorder) would be achieved by the granting of the application.*

The meeting closed at 11.57am.

Chair