
**MINUTES OF THE MEETING OF THE PREMISES / PERSONAL LICENCES SUB-COMMITTEE,
HELD ON MONDAY, 4TH JUNE, 2018 AT 1.20 PM
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY,
CO16 9AJ**

Present:	Councillors White (Chairman), JHenderson, Watson and VGuglielmi
Also Present:	David Dadds, Solicitor and Barrister, Mr Samiul Alam (New Premises Licence Holder) and Alan Beckett, Essex Police Licensing Officer.
In Attendance:	Linda Trembath, (Senior Solicitor (Litigation and Governance)), Karen Townshend (Licensing Manager), Michael Cook (Licensing Assistant) and Debbie Bunce (Legal and Governance Administration Officer).

6. CHAIRMAN FOR THE MEETING

It was moved by Councillor Henderson, seconded by Councillor Watson and:-

RESOLVED - that Councillor White be elected Chairman for the meeting.

7. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were no apologies for absence or substitutions.

8. DECLARATIONS OF INTEREST

Councillor V Guglielmi declared a personal interest in the application in that she had opened the restaurant and had eaten there and also that her husband had recently received an invitation to dine there. She therefore acted as the Stand-by Member at the meeting.

9. REPORT OF THE CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.1 - LICENSING ACT 2003 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - BENGAL DINER, FOX STREET, ARDLEIGH

The Chairman (Councillor White) welcomed everyone to the meeting and gave an overview of the procedure that would be followed for the hearing.

The Council's Licensing Manager (Karen Townshend) then gave a verbal summary of the Report of the Corporate Director (Operational Services) (A.1) and advised that the Sub-Committee had before it, for its consideration, an application for the Review of the Premises Licence held by Mr Syful Alam for the Bengal Diner, Fox Street, Ardleigh, pursuant to Section 51 of the Licensing Act 2003.

Members were informed by the Licensing Manager as part of her summary that the application for the review of the Premises Licence for the above had been submitted by Essex Police following investigations by Officers of the East of England Immigration

Enforcement Team at the Premises on 8 March 2018 and that this had been received by the Licensing Authority on 13 April 2018. The application for the Review had been submitted on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder had been breached because the Premises Licence Holder and Designated Premises Supervisor Mr Syful Alam (Mr Alam snr) had been found to be employing persons who had no right to work or stay in the United Kingdom.

It was reported that the review application and its accompanying supporting documents had advised and contained the following:

- Warrant to Enter and Search Premises dated 8 March 2018.
- Witness Statement and PNB Notes of Chief Immigration Officer Jack Davis dated 23 March 2018.
- Witness Statement and PNB Notes of Immigration Officer John Donaldson dated 9 March 2018.
- Home Office Records of Sibtain Zafar.
- Home Office Records of Nazrul Islam.
- Statement of Police Licensing Officer Alan Beckett dated 5 April 2018.
- Statement of Special Sergeant Catherine Dorrington dated 11 April 2018.

A copy of the Premises Licence Review application and all of the documents referred to in the bullet points above were attached to the report in full as Appendix B to item A.1 of the Report of the Corporate Director (Operational Services).

It was also reported that notice of the review application had been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompanied it. In particular, a notice detailing the review application had been clearly displayed on the premises concerned and on Tendring District Council's Website for the prescribed 28 day period. Periodic checks had been undertaken by the Licensing Authority to ensure that this was the case. The end of the notice period had been 13 May 2018.

The Sub-Committee was formally advised that the Licensing Authority had accepted the review application and had been satisfied that it had been properly served. The Council's Head of Customer and Commercial Services was satisfied that the application and the representations that it made were relevant to the licensing objectives and were not vexatious, repetitious or frivolous in nature.

It was confirmed that no representations had been received from any other Responsible Authorities or other persons who could also make statutory representations in regards to review applications.

Members were informed that any such representations should be relevant and not be considered by the Licensing Authority as vexatious, repetitious or frivolous and could be made in opposition to, or support of, an application and could be made by any individual, body or business that had grounds to do so. The Statutory Guidance was silent on whether representations could be made against an application for a review, or in support of the respondent to the review (which in this case was the Premises Licence Holder (Mr Syful Alam)). However, given that the Guidance was silent on this question, but clearly indicated that other persons could make representations in regards to a review and that representations could be made in support of applications, it was

therefore reasonable to assume that representations could also be made in support of the Premises Licence Holder for due consideration by the Licensing Sub-Committee as part of the Review application hearing process.

The Sub-Committee was informed that Sections 11.1 to 11.28 of the Guidance [issued by the Secretary of State under Section 182 of the Licensing Act 2003] assisted all parties in respect to advice on review applications and hearings, including those arising in connection with crime and the relevant extracts of that Guidance were attached as Appendix C to the Officers' report.

The Sub-Committee also had before it the relevant sections/extracts of the Council's Statement of Licensing Policy in respect of Review applications.

The Chairman asked if anyone had any questions that they would like to ask the Licensing Manager following her summary. There were no questions asked.

The Chairman then asked Mr Dadds, Solicitor for Mr Samiul Alam (Mr Alam Jnr) if he would like to address the Committee and ask questions and he said that he had two points to make, in that the test here in respect of the review is not about "reasonableness", it has to be appropriate and proportionate. He also stated that as a point of law, Mr Alam Jnr had applied to transfer the Licence to himself on 1 June 2018 and that transfer takes effect immediately. Therefore, Mr Alam Snr was not now the Premises Licence Holder or Designated Premises Supervisor, unless Essex Police raised any objections to the transfer and they had 14 days in which to do so.

The Chairman said that although that was now the case, the Committee were here to discuss issues that happened when Mr Alam Snr was the Premises Licence Holder.

Mr Alan Beckett, Essex Police Licensing Officer then addressed the Committee and gave a summary of the Police case. Officers from the Immigration Service visited the Bengal Diner on 8 March 2018 seeking three persons who had no leave to remain in the UK. They did not find these persons but found two other persons working there, a Mr Sibtain Zafar who said he was working as a waiter and a Mr Nazrul Islam who said he was working as a cook at the Bengal Diner. Mr Zafar stated that he was paid £260 per week and Mr Islam stated that he was paid £250 per week. Both stated that they were paid cash in hand and considered Mr Alam Snr to be their boss. They also stated that they had not shown any identify documents as proof of the right to work in the UK.

On 14 April 2018 Mr Beckett attended at the Bengal Diner to undertake right to work checks. Mr Alam Snr could not produce any right to work records and stated that all documents were with his Accountant. Revenues and Customs also attended the Diner in May in respect of PAYE and national insurance matters.

Essex Police were seeking a revocation of the Licence of the Premises.

The current Premises Licence Holder, Mr Alam Jnr was asked if he had any questions but he did not.

The Chairman, Councillor White queried the fact that the Immigration Officers were originally seeking three persons and did not find them, but found 2 other illegal

immigrants and said that he presumed that further action could be taken against the Premises Licence Holder and that this would go before the Magistrates' Courts.

Mr Dadds said that the Immigration Office has the power to issue civil penalties, but that he was not aware whether a civil penalty is going to be issued in this matter.

Mr Dadds then referred to a case mentioned in the Police evidence which was a case against another Local Authority for a similar offence. Mr Dadds stated that he had in fact worked on this case and it was completely different from the circumstances before the Committee. In the case of the Bengal Diner there was no exploitation of the staff in respect of the minimum wage and reasonable checks had been undertaken in respect of right to work checks. Civil Penalties are in fact imposed more and more, as a deterrent effect. The previous Premises Licence Holder was probably just unaware of exactly what checks he needed to make. Warrants are generally issued to the Immigration Office after people are put on PAYE, instead of informing the employer that they are employing persons without the legal right to work in the UK. Mr Alam Snr has now stepped aside as he realises that he had put the business and premises at risk and his son Mr Alam Jnr has now taken over as the Premises Licence Holder and Designated Premises Supervisor.

Mr Alam Jnr has now suggested 6 conditions to be put on the Licence and these were circulated to the Committee.

Although the Police are asking for the Licence to be revoked, Mr Dadds is suggesting that perhaps a period of suspension of 8 weeks would be more appropriate. He stated that Mr Alam Jnr is not responsible for the actions of his father and going forward Mr Alam Jnr would promote the Licensing Objectives. He stated that Mr Alam Snr already has a civil penalty against him of somewhere in the region of £30-40,000. The Licensing Act was not about punishment. The question is whether it is disproportionate to revoke the Licence or suspend for up to 3 months, or the Sub-Committee could consider a period of suspension of not more than eight weeks.

Mr Beckett responded and said that the Police acknowledged that their staff were paid a reasonable wage, notwithstanding no tax or National Insurance was paid and would normally ask for a revocation. However, Mr Dadds proposal of an 8 week suspension together with the 6 conditions seems reasonable albeit that point 6 of the conditions should be amended to include right to work checks being made available upon reasonable request.

Councillor Watson then asked Mr Alam Jnr what steps he had taken to understand the conditions and the law and he stated all of the Licensing Objectives and that he has undertaken training and had legal guidance on the conditions.

Mr Dadds then stated that he had a letter from the Bengal Diner's accountants, Amani Messton & Co and provided a copy of the letter to the Committee which stated that Mr Alam Jnr was now one of the Directors of the Company, Nest Best Ltd, which commenced trading on 22 March 2018. The Bengal Diner was previously run by Well Smart Ltd. There were 8 employees working for the Company according to employer payroll records.

The Chairman also queried with Mr Dadds about the question of “bed space” where employees were living at the Premises and Mr Dadds stated that the employees had their own rooms above the premises.

Councillor Henderson then asked Mr Dadds about an issue with advertising on the Bengal Diner’s website which advertised events for £44.95 per person with “drink as much as you can” on the advertisement. She stated that this was in conflict with the Licensing Objective the Prevention of Crime and Disorder. Mr Dadds stated that if a person was intoxicated then they would not be served any more alcohol but agreed that the wording was not appropriate and confirmed that this would be looked at and changed. If the Committee were minded to revoke the Licence for a period of 8 weeks then this would be an opportunity to address these issues.

The Sub-Committee then withdrew from the meeting in order for the Sub-Committee to consider the application and reach a decision. They asked the Council’s Solicitor and the Legal and Governance Administration Officer to retire with them.

The Sub-Committee, Council’s Solicitor and Legal and Governance Administration Officer then returned to the meeting and the Council’s Solicitor confirmed that she had not provided any specific legal advice to the Sub-Committee whilst it was making its decision

The Chairman of the Sub-Committee then read out the following decision:

The Sub-Committee has given careful consideration to this application for a review and to the actual representations received from Essex Police on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder had been breached for the reasons set out in their representations. In making their decision, the Sub-Committee have taken into account:-

- (i) relevant matters set out in the Licensing Authority’s own Statement of Licensing Policy;
- (ii) the relevant parts of the Guidance issued by the Secretary of State;
- (iii) the range of powers provided to Licensing Authorities by the Licensing Act 2003 in determining a Review;
- (iv) Any legal advice given by the Council’s Solicitor.

The Sub-Committee are also aware that it must act to promote the Licensing Objectives as set out in the Licensing Act 2003 and that any decision it took in determining a Review must be necessary for the promotion of these objectives.

The decision of the Sub-Committee is as follows:-

“In respect of the application for the review of a Premises Licence submitted by Essex Police in respect of the Premises known as The Bengal Diner, Fox Street, Ardleigh, the Sub-Committee’s decision is to suspend the Licence for a period of eight weeks, a period suggested by Mr Dadds on behalf of the new Premises Licence Holder and Designated Premises Supervisor, Mr Samiul Alam.

The Licensing Objective for the prevention of Crime and Disorder has been breached by virtue of the employment of persons who had no right to work in the UK for various reasons: a matter that is being dealt with by the Immigration Service.

In order to ensure that the concerns raised by Essex Police are addressed in the future, six conditions, offered by Mr Dadds on behalf of Mr Alam Jnr, and approved by Essex Police subject to one addition at condition 6 in relation to the right to work checks, will be attached to the Premises Licence:-

1. Alcohol shall not be sold or supplied by any person who is not employed to work at the premises and only following the authority of the holder of a personal licence holder to do so in writing.
2. Before any person is employed at the premises sufficient checks will be made of their bona fides in accordance with the current Home Office "An employer's guide to right to work checks" to ensure that they are legally entitled to be employed in the UK. Such checks will include:
 - Proof of their identity
 - Nationality
 - Current immigration status
 - Details of their name and address
 - Date of Birth
3. Employment records will be made available following any reasonable request to the premises licence holder by any officer authorised under the Licensing Act 2003 including police staff acting on behalf of the Chief Officer of Police.
4. The premises licence holder shall operate a "Challenge 25" or similar scheme at the premises whereby anyone who appears to be under the age of 25 shall be asked to provide proof of age that he or she is over 18. Proof of age shall only comprise of a passport, a photo card driving licence, a PASS accredited proof of age card or UK forces identity card.
5. The premises licence holder shall ensure reasonable and adequate staff training be carried out and properly documented in relation to, dealing with incidents and prevention of crime and disorder; sale of alcohol (to underage, persons over 18 purchasing for underage, drunks etc), prior to being allowed to sell or supply alcohol.
6. Training records and right to work checks and any associated documentation will be made available following reasonable request by any officer authorised under the Licensing Act 2003 including police staff acting on behalf of the Chief Officer of Police.

A copy of those conditions will be attached to this decision.

Details of the Sub-Committee's decision will be notified to all interested parties in writing.

Finally, I must mention that all parties who are aggrieved at the decision of the Sub-Committee have a right of appeal to the Magistrates' Court."

The meeting was declared closed at 3.11 pm

Chairman