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Premises / Personal Licences Sub-Committee

22 April 2020

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**MINUTES OF THE MEETING OF THE PREMISES / PERSONAL LICENCES SUB-COMMITTEE,  
HELD ON WEDNESDAY, 22ND APRIL, 2020 AT 10.00 AM  
IN THE TELEPHONE HEARING**

<b>Present:</b>	Councillors V Guglielmi, J Henderson, Davis and Casey
<b>Also Present:</b>	William Moody, District Licensing Officer (Essex Police), Mark Gear, Immigration Officer (Home Office), Councillor Peter Cawthron, Ian Davidson (Chief Executive) and Keith Simmons (Head of Democratic Services and Elections)
<b>In Attendance:</b>	Karen Townshend (Licensing Manager), Emma King (Licensing Officer), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer) and Debbie Bunce (Legal and Governance Administration Officer)

**18. ELECTION OF CHAIRMAN FOR THE MEETING**

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

**RESOLVED** – That Councillor V Guglielmi be elected Chairman for the meeting.

**19. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies for absence or substitutions.

**20. MINUTES OF THE LAST MEETINGS**

The minutes of the meetings of the Premises/Personal Licences Sub-Committees held on 28 February 2020 and 10 March 2020 were approved as a correct records.

**21. DECLARATIONS OF INTEREST**

There were none.

**22. REPORT OF ACTING CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)  
A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - GREAT  
GURKHA RESTAURANT, 126 OLD ROAD, CLACTON-ON-SEA, ESSEX**

The Chairman (Councillor V Guglielmi) welcomed everyone to the meeting and made introductory remarks.

The Council's Licensing Manager (Karen Townshend) gave a verbal summary of the written report and advised that the Sub-Committee had before it, for its consideration as set out in item A.1 of the Report of the Corporate Director (Operations and Delivery), an application for the review of a Premises Licence in respect of Great Gurkha Restaurant.

Section 2.2 of the written report set out the proposed opening hours for the premises which were:

### **Sale of Alcohol on and off the premises**

Monday to Thursday	12:00 - 23:30
Friday to Saturday	12:00 - 00:00
Sunday	12:00 - 23:30

### **Performance of Recorded Music**

Monday to Thursday	12:00 - 23:30
Friday to Saturday	12:00 - 00:00
Sunday	12:00 - 23:30

### **Late Night Refreshment**

Monday to Thursday	23:00 - 23:30
Friday to Saturday	23:00 - 00:00
Sunday	23:00 - 23:30

### **The opening hours of the premises**

Monday to Thursday	12:00 - 00:00
Friday to Saturday	12:00 - 00:30
Sunday	12:00 - 00:00

### **Where the licence authorises supplies of alcohol whether these are on and/or off supplies**

Supply of Alcohol both on and off the premises

Aishwarya Enterprises Ltd have been the Premises Licence holder since the licence was transferred on 13 November 2019, and Miss Mithula Varatharasa has been the Designated Premises Supervisor (DPS) of the restaurant since 13 November 2019.

An application for the Review of the Premises Licence for the Great Gurkha Restaurant had been submitted by Essex Police. This had been received by the Licensing Authority on 6 February 2020 on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder had been breached; as the Premises Licence holder Aishwarya Enterprise Ltd and DPS Miss Mithula Varatharasa had been found by the East of England Immigration Enforcement team on 10 January 2020 to be employing persons who had no right to work or stay in the United Kingdom.

In summary, the Review application and its accompanying supporting documents advised and contained the following:

- Home Office guidance on right to work checks
- Home Officer Letter of support.
- A Section 9 witness statement from PC Southgate regarding police visit on 25 February 2019.
- A Section 9 witness statement from Licensing Officer Moody regarding immigration visit on 10 January 2020.

- A Section 9 witness statement from Immigration Officer Gear regarding immigration visit on 10 January 2020.
- A Section 9 witness statement from Licensing Officer Moody regarding a meeting with Mithula Varatharasa on 29 January 2020.
- Extracts from company registration application for Aishwarya Enterprises Ltd.

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.

Notice of the review application had been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. In particular, a notice detailing the review application had been clearly displayed on the premises concerned and on the Tendring District Council Website for the prescribed 28 day period. Periodic checks had been undertaken by the Licensing Authority to ensure that this was the case. The notice period had expired on 5 March 2020.

The Licensing Authority accepted the review application and was satisfied that it had been properly served in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. The Head of Customer and Commercial Services is satisfied that the application and the representations that it makes are relevant to the licensing objectives and are not vexatious, repetitious or frivolous in nature.

It had been confirmed that no representations have been received from any other Responsible Authorities.

Other persons can also make representations in regards to review applications. Other persons in terms of the Licensing Act 2003 can include any individual, body or business and in accordance with paragraph 8.13 of the Section 182 Guidance issued by the Secretary of State (April 2017 version) which accompanies the Licensing Act 2003, are entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence.

Such representations should be relevant and not be considered by the Licensing Authority as vexatious, repetitious or frivolous and can be made in opposition to, or support of, an application and can be made by any individual, body or business that has grounds to do so. The S182 Guidance is silent on whether representations can be made against an application for a review, or in support of the respondent to the review (which in this case is the Premises Licence holder Aishwarya Enterprises Ltd). However, given that the Guidance is silent on this question, but clearly indicates that other persons can make representations in regards to a review and that representations can be made in support of applications, it is therefore reasonable to assume that representations can also be made in support of the Premises Licence Holder Aishwarya Enterprises Ltd in this matter for due consideration by the Licensing Sub Committee and as part of the Review application hearing process.

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.

It was noted that although Miss Mithula Varatharasa, the Designated Premises Supervisor of the Great Gurkha Restaurant had been contacted on numerous occasions she was not present on the telephone.

The Chairman then invited Mr William Moody, Essex Police District Licensing officer to present the Police' case.

He explained that in February 2019 the Police received intelligence that the restaurant was employing illegal workers. A search warrant was executed and two males were found working and were arrested for immigration offences as both had no right to work. At that time a formal warning was issued rather than apply for a review at that stage.

Further intelligence was received that illegal workers were being employed at the restaurant and in January 2020 a further search warrant was executed with the Immigration Office and Officers from Tendring District Council present. Five staff were on the premises and three of those staff were working illegally in the kitchen. When asked what they were being paid one said that he got his food and accommodation and another said £10-£20. None of these illegal workers had the right to work in the UK.

Mr Moody explained that although it was a different company running the restaurant, upon checking details with Companies House the restaurant was under the same management in February 2019 and January 2020.

There had been a change of staff in January 2020 and when the owner was asked to provide copies of documents for the previous staff it was claimed that they had been lost.

The owners admitted that they felt that they had lost control of the business.

The Chairman asked Members if they had any questions for either William Moody or Mark Gear, the Immigration Officer from the Home Office who was also present.

They were asked about right to work checks and Mark Gear advised that an employer would ask for documents from a potential employee such as a passport, driving licence and a bank statement. Documents from previous employees had either been lost or had not been provided,

Mark Gear explained that an employer would submit the employees details onto the .Gov website if they were from outside of the EU and they would then receive a Yes or No as to whether the employee could work in the UK for 3/6 or 12 months and a certificate would be provided.

Members asked if when the Police and Immigration first went to the premises whether they were aware of what checks were needed for right to work and Mr Moody explained that they had a meeting with the Licence Holder to go through what checks were needed. The Licence Holder was now a different person but the previous Licence Holder was the mother of the current Licence Holder and was present on both occasions.

Members asked whether their understanding of the English language was sufficient and it was confirmed that there were no communication issues.

Members mentioned that there appeared to be only one employee registered with HMRC and it was confirmed that HMRC were aware of the business as they were joined by Anne Cranston, the Hidden Economies Officer on 29th of January 2020 for an arranged appointment with Mrs. Varatharasa.

Mr Moody was asked whether Mrs Varatharasa had any other businesses and he said that she did not have any other directorships according to Companies House.

The fact that although there had been a change of ownership of the restaurant between February 2019 and January 2020 the same persons were present on both occasions they were suspicious that there had been no effective change in the running of the business and they had therefore committed two offences.

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.

**23. EXCLUSION OF PRESS AND PUBLIC**

It was moved by and seconded, and:-

**RESOLVED** - "That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting/hearing during the period of time when it is deliberating and reaching its decision on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act."

**24. REPORT OF ACTING CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)  
A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - GREAT GURKHA RESTAURANT, 126 OLD ROAD, CLACTON-ON-SEA, ESSEX**

Following its deliberations, the Sub-Committee, Council's Solicitor and Legal and Governance Administration Officer then returned to the meeting and Essex Police and the Immigration Officer were invited to rejoin the meeting. 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:

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**“LICENSING ACT 2003 - APPLICATION FOR THE REVIEW OF PREMISES LICENCE - GREAT GURKHA RESTAURANT, 126 OLD ROAD, CLACTON ON SEA, ESSEX**

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.

The Licensing Objective for the Prevention of Crime and Disorder has been breached.

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:-

1. In respect of the application for the Review of a Premises Licence submitted by Essex Police in respect of the premises known as Great Gurkha Restaurant, 126 Old Road, Clacton on Sea, Essex, the Sub-Committee's decision is to revoke the Licence.
2. It has been determined that the Licence must be revoked for the following reason[s]:-

The committee note that this is not the first time, even in the last 12 months, that these premises have come to the attention of the police and immigration authorities, and has been found to be employing multiple illegal workers on two separate occasions in that 12 month period, and despite being issued a formal warning previously.

In addition it is noted that despite changes in names at, for example, Companies House the operational management of the premises has remained the same throughout the time since these premises first came to the attention of the police and/or immigration authorities.

Further following the first such visit the police and/or immigration authorities provided education and advice, advice that it appears has still not been followed as on this occasion, as on previous occasions, the paperwork that is required to

be kept was again unable to be provided including for example photocopies of passports, bank statements, and similar documentation. The immigration officer was able to advise the committee how simple it was for any business to apply to the government for a right to work check to be undertaken, and proof provided: there was no evidence that any such checks had been undertaken.

It was further noted that those workers found to be working illegally were being paid substantially below the minimum wage, including one who was paid just £10 a day so that in addition to other potential criminal offences, there is a loss to HMRC and therefore the wider British public.

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 12.18 pm

**Chairman**

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