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**MINUTES OF THE MEETING OF THE PREMISES/PERSONAL LICENCES  
SUB-COMMITTEE 'C', HELD ON MONDAY 15 MAY 2017 AT 10.00 AM  
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

<b>Present:</b>	Councillors Cossens (Chairman), J Henderson and M J Skeels
<b>Also Present:</b>	Councillor Watson (Stand-by Member)
<b>In Attendance:</b>	Linda Trembath (Senior Solicitor - Litigation and Governance), Simon Harvey (Licensing Manager), Steve Mahoney (Licensing Assistant) and Katie Sullivan (Committee Services Officer)

**1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

**2. MINUTES OF THE LAST MEETING**

The minutes of the last meeting of the Sub-Committee, held on 20 June 2016, were approved as a correct record and signed by the Chairman.

**3. DECLARATIONS OF INTEREST**

Councillor M J Skeels declared that he had eaten at the Saffron Restaurant some years ago, however he did not know anyone who worked there.

**4. REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - SAFFRON RESTAURANT, 51 RAVENSDALE, CLACTON-ON-SEA, ESSEX, CO15 4QH**

The Chairman (Councillor Cossens) welcomed everyone to the meeting and gave an overview of the procedure that would be followed for the hearing. It was confirmed that Members and Interested Parties had received the 'Procedures for Hearings – Premises/Personal Licences Sub-Committee procedure' document.

The Council's Licensing Manager (Simon Harvey) then gave a verbal summary of his 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 (Operational Services), an application for the Review of the Premises Licence held by Mr Ismail Ali for the Saffron Restaurant, 51 Ravensdale, Clacton-on-Sea, Essex, CO15 4QH. A location plan for the Saffron Restaurant was handed out to those present.

Members were informed by the Licensing Manager as part of his summary that an application for the review of the Premises Licence for the Saffron Restaurant had been submitted by Essex Police following investigations by Officers of the Immigration Service and that this had been received by the Licensing Authority on 31 March 2017. The application for the Review had been submitted on the grounds that the lack of management control at the premises in regards to the employment of persons not entitled to work in the UK had breached the Licensing Objective in respect of the Prevention of Crime and Disorder. As a result of the breach, Essex Police were requesting the Licensing Sub-Committee to revoke the premises licence in question.

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

- An unsigned Section 9 witness statement from an Immigration Officer (Mr Edward O'Dowd-James) which had detailed an investigation made by the Immigration Authority on 16 February 2017 into allegations that the Saffron Restaurant was employing a person who had no right to stay or work in the United Kingdom and also the outcome of that investigation;
- A transcript of a stated and certified case in the Queen's Bench Division (Administrative Court) High Court of Justice which was heard on 14 April 2016 and detailed a successful appeal made by East Lindsey District Council against a District Judges decision of 23 June 2015 not to uphold a revocation of a premises licence determined by a Licensing Sub-Committee of East Lindsey District Council on the grounds of Crime and Disorder because the licence holder had knowingly employed a person who did not have the right to work in the United Kingdom and as a result, this had breached the Prevention of the Crime and Disorder licensing objective required under the Licensing Act 2003;
- A schedule of Income Tax (Pay As You Earn) Regulations 2003;
- A copy of a newspaper article in the Clacton Gazette published on 4 March 2017 which had detailed an investigation by the Immigration Authority which had found that on 16 February 2016 the Saffron Restaurant had four persons working on the premises who did not have the right to work in the United Kingdom and as a result the business had been served with a 'civil penalty referral notice' by the East of England Immigration Enforcement team;
- A schedule of desired outcomes that Essex Police were seeking from the hearing as a result of having applied to the Licensing Authority for a Review of the Premises Licence held by Mr Ismail Ali for the Saffron Restaurant, 51 Ravensdale, Clacton-on-Sea, CO15 4QH and which were the revocation of the Premises Licence or the Suspension of the Premises Licence for a period determined by the Licensing Sub-Committee. Essex Police did not consider that it was suitable to impose conditions onto the Premises Licence in a case where workers had been employed illegally; and
- A copy of the Premises Licence held for the Saffron Restaurant.

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 30 April 2017.

The Licensing Authority had accepted the review application and had been satisfied that it had been properly served. The Licensing Manager informed Members that he 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 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 Ismail Ali). 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 Mr Ali in this matter for due consideration by the Licensing Sub-Committee and as part of the Review application hearing process.

The Solicitors acting on behalf of the respondent and Premises Licence holder Mr Ali had submitted ten individual letters of support for him, his character and the Saffron Restaurant as a business as a whole and had also submitted a petition containing 70 individually named persons who were strongly against the revocation of the Premises Licence of the Saffron Restaurant. Those letters and petition were attached as a bundle to the report as Appendix 3.

The Sub-Committee was made aware by the Licensing Manager that the petition did not carry or include the reason for the petition and why persons had been asked to sign it anywhere other than on its first page. Advice had previously been sought on this question of including the reason for the petition to be shown on all pages of the petition. The Sub-Committee were informed that they should only take into consideration and give any weight to the first page which included the statement and the reason as to why persons had been asked to sign the petition and why they had signed it.

The Licensing Manager confirmed that Mr Ali's Solicitors had also submitted a four page response and mitigation to the review application which in summary included advice that Mr Ali was in the process of re-organising the restaurant's administrative procedures to be more in line with Home Office expectations; that he had already begun screening all staff members to ensure that they had the right to work in the UK; that the incident of the 16 February 2017 was a one-off and they believed that as their client was objecting to the civil penalty served by the Immigration Authority and many factors were in dispute about the incident, that Essex Police had acted prematurely by calling for a review of his Premises Licence.

The Sub-Committee was informed that Appendix 4 showed the full detail of the Section 182 Guidance issued to accompany the Licensing Act 2003 in regards to a Review of a Premises Licence that was applied for through a process other than a Closure Order.

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

Stephen Sparrow the County Licensing Officer for Essex Police (who had submitted the application on behalf of Essex Police for the Review of the Premises Licence held by Mr Ismail Ali) then addressed the Sub-Committee and gave an overview of the events and facts of the case and the reasons behind why Essex Police had made such an application. Mr Sparrow referred the Sub-Committee to the stated case of East Lindsey District Council v Abu Hanif in April 2016 which established a legal precedent that could be referred to in other cases, which held that it was not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged and advised that a transcript of this case was in the review application bundle provided by the Police. Mr Sparrow confirmed that a civil penalty, in the sum of £30,000 had been imposed on Mr Ali by the Immigration Service in connection with the illegal workers that had been found to be working at the premises at the time it was raided by the Immigration Services on 16 February 2017 and while three persons had been found who had no right to work in the UK, and therefore it was contended that they had been employed illegally by Mr Ali, it was the Police and Immigration Services view that anything up to four persons may have been illegally employed as the person sought under the Immigration Services warrant was not found on that day although intelligence suggested that he did work there.

Mr Ismail Ali's Solicitor (Mr Sabbir Ahmed of Taj Solicitors) was asked by the Chairman of the Sub-Committee, Councillor Cossens, if he had any questions for the applicant to which he responded by asking Mr Sparrow if he had any further updates in regards to the suspected breach of Mr Ali not undertaking the relevant employment checks. Mr Sparrow replied by confirming that it was not his position to answer the question as it was not within his remit or knowledge to do so and that his role was to bring the review not deal with the immigration offences or any appeal lodged against the civil penalty served on Mr Ali.

Mr Ali's Solicitor addressed the Sub-Committee and gave an overview of his client's position and the events leading up to the 16 February 2017 when he was found by the East of England Immigration Enforcement team to be employing persons who had no right to work or stay in the United Kingdom. Mr Ali's Solicitor confirmed that Mr Ali had checked the employees' documents but had not been aware that they were fraudulent and that Mr Ali had provided all of these original documents to the Home Office following on from the events on 16 February 2017 and therefore did not have any copies to be able to show the Sub-Committee as an example of what he had been supplied by the persons in question, but that his client had no reason to doubt at the time that the documents were genuine.

Stephen Sparrow of Essex Police was then asked by the Chairman of the Sub-Committee, Councillor Cossens, if he had any questions for Mr Ali's Solicitor to which he responded by asking a question in relation to Mr Ali's screening procedures and what checks had been carried out to date. Mr Ali's Solicitor replied by confirming that Mr Ali had his own internal system which was checking original documents from the employee and then making a copy and filing them away.

The Sub-Committee then asked Mr Ali's Solicitor a question in relation to whether Mr Ali had a PAYE register and whether book keeping of the payroll was managed. Mr Ali's Solicitor confirmed that Mr Ali handed everything over to his Accountant. Mr Ali did not have or use a computer and that he still did everything by pen and paper. It was confirmed that Mr Ali was currently looking at the management of the business and

administrative procedures and was looking to make improvements. It was also confirmed that the workers had only just started working for Mr Ali and that one of them had given Mr Ali his National Insurance number.

The Chairman asked if any Members had any further questions or whether the applicant or the representative of the licence holder Mr Ali had any questions that they wished to ask of each other or any other party relevant to the review hearing. As there were no further questions, both the applicant and the representative for the licence holder were invited by the Chairman to make their closing statements.

Mr Ali's Solicitor confirmed that:

- 1) The civil penalty was being appealed, and that it was currently with the Home Office;
- 2) All employees had the 'correct' documents;
- 3) Mr Ali was a victim of fraud; and
- 4) Mr Ali had not breached the Licensing Objectives.

Stephen Sparrow confirmed that:

- 1) One of the illegal workers had been removed from the UK;
- 2) Mr Ali had said that he had checked the papers given to him by the employees but it did not 'ring true';
- 3) Letters of support for Mr Ali had been received but that these should be disregarded as they only confirmed that the food was good at the restaurant and Mr Ali was hard working; and
- 4) It was his view that no checks had ever been carried out.

The Sub-Committee, the Council's Solicitor and the Committee Services Officer withdrew from the meeting in order for the Sub-Committee to consider the application and reach a decision.

The Sub-Committee, Council's Solicitor and Committee Services Officer then returned to the meeting and the Council's Solicitor confirmed that she had not provided any 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 application and to the representations made on behalf of Mr Ismail Ali, the Premises Licence Holder and business owner both in writing and today.

In making its decision the Sub-Committee have taken into account:

- 1) Relevant matters set out in the Licensing Authority's own Statement of Licensing policy;
- 2) The relevant parts of the Guidance issued by the Secretary of State;

- 3) The range of powers provided to Licensing Authorities by the Licensing Act 2003 in determining a review; and
- 4) 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 takes in determining a review must be necessary for the promotion of these objectives.

The decision of the Sub-Committee is to suspend the Premises Licence for a period of three months.

The Sub-Committee's reasons are as follows:

- 1) Reviews ordinarily follow where premises have been warned about some aspect of the business that affects the premises licence, or where their behaviour affects that licence, and/or advice has been given about improvement but they have failed to improve. However, where the activity causing concern is so serious, involving criminal activity such as the sale and distribution of drugs, or as here, the employment of a person or persons who are disqualified from that work because of their immigration status, then a review can be sought without previous involvement by the applicant, here Essex Police;
- 2) This Sub-Committee's role is to promote the Licensing Objectives - in this case it is the prevention of crime and disorder – and not to punish – that is the role of others including, where appropriate, the criminal courts. However, the Guidance issued under Section 182 of the Licensing Act 2003 does suggest that in certain categories, where the premises have been used to further crime, then revocation should be seriously considered, even for the first incident;
- 3) In this case we are told that, having obtained a warrant on 13 February 2017, Immigration Officers attended at the Saffron Restaurant on the evening of 16 February 2017. The Saffron Restaurant is owned and run by Mr Ismail Ali, the Premises Licence Holder and the Designated Premises Supervisor;
- 4) The Immigration Officers did not, it seems, find the individual they were looking for but found three other individuals, two of whom had, apparently, no right to work in the UK, and one of whom had overstayed his Visa;
- 5) We have been told that a civil penalty, in the sum of £30,000 has been imposed on Mr Ali by the Immigration Service in connection with the illegal workers – three of whom were found, at the premises, but the fourth who was named on the warrant, we are told, was not found;
- 6) We have also been told that the civil penalty is being appealed, and that it is currently with the Home Office;
- 7) We have been referred to the case of East Lindsey District Council and accept that there does not need to be a prosecution, or a conviction for the Licensing Objection of Preventing Crime and Disorder to be engaged;
- 8) We view the matter seriously and wish to address our role in the prevention of crime and disorder, and allow Mr Ali to address serious deficiencies in the management of the business which we have been told he is already addressing and which a three month's suspension should enable him to achieve working with all relevant authorities, and his advisors."

The Chairman confirmed that all relevant persons would receive the decision in writing and that they had the right to appeal the decision to the Magistrates' Court.

The meeting was declared closed at 12.07 pm

**Chairman**