

MINUTES OF THE MEETING OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'C', HELD ON MONDAY, 20TH NOVEMBER, 2017 AT 1.35 PM IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY

Present:	Councillors Cossens (Chairman), J Henderson and M J Skeels Jnr
Also Present:	Councillor Watson (Stand-by Member)
In Attendance:	Mark Westall (Head of Customer and Commercial Services), Linda Trembath (Senior Solicitor (Litigation and Governance)), Emma King (Licensing Officer), Michael Cook (Licensing Assistant) and Debbie Bunce (Legal Administration & Information Officer), Charlotte Tibbles (Licensing Apprentice)
Also in Attendance:	Gordon Ashford (Essex Police), Joanne Stainsbury (Essex Police), Jack Davis (Chief Immigration Officer), Tahrira Ahmed (Licence Holder), Khaled Ahmed, Designated Premises Supervisor, Sayed Hasan – Universal Lawyers - Registered Foreign Lawyer [RFL]

5. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

6. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Sub-Committee, held on 15 May 2017, were approved as a correct record and signed by the Chairman.

7. DECLARATIONS OF INTEREST

There were none.

8. REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - NIRALA TANDOORI, 14 BROOK STREET, MANNINGTREE, CO11 1DR

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 Officer (Emma King) 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 Ms Tahrira Ahmed for the Nirala Tandoori, 14 Brook Street, Manningtree.

Members were informed by the Licensing Officer as part of her summary that an application for the review of the Premises Licence for the Nirala Tandoori had been submitted by Essex Police following investigations by Officers of the East of England Immigration Enforcement Team at the Premises and that this had been received by the Licensing Authority on 11 October 2017. 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 Ms Tahrima Ahmed and the Designated Premises Supervisor Mr Khaled Ahmed had been found to be employing persons who had no right to work or stay in the United Kingdom. As a result of that breach, Essex Police were requesting the 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:

- A Section 9 witness statement from a Detective Constable Mr Richard Adams which had detailed an authorised visit made with HM Revenues and Customs on 30 August 2017 to the Nirala Tandoori, where during the visit it was suspected that at least two of the persons present were suspected illegal immigrants. Detective Constable Adams had subsequently made a referral to UK Immigration regarding the visit and the potential illegal immigrants working there;
- A Section 9 witness statement from Immigration Officer John Donaldson which had detailed a visit to the Nirala Tandoori on 14 September 2017, where during the visit he had questioned Mr Nizam Uddin;
- A Section 9 witness statement from Immigration Officer James Denham which had detailed a visit to the Nirala Tandoori on 14 September 2017, where during the visit he had questioned Mr Abdur Rahim;
- A Section 9 witness statement from Chief Immigration Officer Jack Davis which had detailed a visit to the Nirala Tandoori on 14 September 2017, where during the visit it was found that Mr Uddin had no permission to work and he was subsequently escorted from the premises and where it was found that Mr Rahim had no Visa to remain or work in the UK and he was therefore arrested;
- A Section 9 witness statement from Police Licensing Officer Alan Beckett which had detailed a visit to the Nirala Tandoori on 30 September 2017 where the visit from the Immigration Service had been discussed and the DPS had been asked to show passport checks;
- A Section 9 witness statement from Special Constable Jack Howe which had detailed a visit to Nirala Tandoori on 30 September 2017 where evidence of right to work documents had been requested;
- Result of Home Office right to work for Mr Nizam Uddin;
- Result of Home Office right to work for Mr Abdur Rahim;
- A transcript of a stated and certified case in the Queens Bench Division (Administrative Court) High Court of Justice which had been heard on 14 April 2016 and had detailed a successful appeal made by East Lindsey District Council against a District Judge's 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 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. This case clarified the position that there did not need to be a prosecution or criminal conviction in relation to a licence holder for a Licensing Authority's crime prevention objective to be engaged although each case would be decided upon its own merits.. The promotion of the prevention of crime and disorder by a Licensing Authority was anticipatory and preventive.

- A schedule of Income Tax (Pay As You Earn) Regulations 2003; and
- A schedule of desired outcomes that Essex Police were seeking from this hearing as a result of having applied to the Licensing Authority for a Review of the Premises Licence held by Ms Tahrira Ahmed for the Nirala Tandoori, 14 Brook Street, Manningtree. This was the revocation of the Premises Licence as 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.

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 as Appendix 2.

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 8 November 2017.

The Licensing Authority had accepted the review application and had been satisfied that it had been properly served. It 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 (Ms Tahrira Ahmed)). 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 (Ms Tahrira Ahmed in this matter) 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 this Guidance were attached as Appendix 3.

The Licensing Officer then informed the Committee that they had received a No Action Notice issued by Immigration Enforcement from Ms Tahrira Ahmed after the report had been sent out to Members which stated that Ms Tahrira Ahmed would not be liable for a civil penalty in respect of suspected breaches of Section 15 of the Immigration, Asylum and Nationality Act 2006. A copy of this was provided to the Committee and the representatives of Essex Police.

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

Joanna Stainsbury, 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 Ms Tahrira Ahmed) 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.

It was stated by Ms Stainsbury that from the evidence it could be seen how easy it was for an employer to make checks. Not making the required checks affected other businesses and exploited labour, denied the payment of tax and national insurance and was considered modern day slavery. Employees often worked long hours and did not receive the minimum wage.

She further stated that if there were no records of employees then it was difficult to prove that there were persons working illegally at the premises.

The Chairman then asked questions and queried the dates of the visit by the Police as on page 32 of the Agenda, the Police report stated 17th September 2017 whereas on page 25 it was stated to be 14th September 2017. The Police confirmed that it was in fact 14th September 2017. The Chairman also queried the reference to Mr Rahim's claim for asylum which appeared to have been made on 18 September 2017 and not as soon as he entered the country; the Immigration Officer said that the claim for asylum usually happened once the person had been arrested.

The Chairman then asked if any Members had any further questions or whether the applicant or the licence holder had any questions that they wished to ask of each other or any other party relevant to the review hearing.

Mr Hasan, a Registered Foreign Lawyer at Universal Solicitors (legal representative), for Mr Ahmed had no questions, but he had been provided with a Witness Statement from Mr Ahmed and asked whether this could be considered today. The Committee, noting that the agreement of the other parties to the review would need to be given before evidence being submitted at such a late stage could be considered, agreed that the parties should be supplied with copies in order that consideration could be given as to whether the evidence could be accepted or not and asked for copies to be provided to the Committee and the Police. A short adjournment was agreed in order that the copies could be taken, and the Committee and the Police could read this statement. A room

was made available for the police and the Immigration Officer to consider this evidence privately.

Following the adjournment the meeting reconvened and the Chairman asked the Police whether they were happy to accept the statement and they confirmed that they were.

The Chairman then asked whether Mr Ahmed would be able to read the Statement out and answer questions. He confirmed that he could and proceeded to read out his Statement.

In summary, Mr Ahmed stated that:-

- He positively promoted all licensing objectives as per the Licensing Act 2003 and he said that he did not breach the Licence conditions.
- That he was responsible for recruiting employees for the restaurant.
- This was his only job which provided for himself and his family.
- He confirmed the visit of the Immigration Officers on 14th September 2017, that this was their first visit, and that he was present throughout the visit. He stated that he was present during the full conversation between the Immigration Officer and Mr Uddin and Mr Rahim, and that the two men were at the restaurant to meet a friend, and that he did not know them.
- He was very aware of his responsibilities as a Designated Premises Supervisor and that he had to make sure that employees are allowed to work legally in the United Kingdom and of the need to see original documentation.
- He stated that he carried out right to work checks via the www.gov.uk website and that if the employees provided a British passport then he did not need to carry out further checks and that the system is in place through his accountant that currently all employees are receiving salaries according to their contracted hours.
- He stated that the business had been struggling financially and that if the premises loses its licence he would have to shut the business.

Mr Ahmed explained that he had spoken to the Police and Licensing Officers to explain his situation. He stated that if the Licence was revoked he would have no option but to close the restaurant.

Mr Hasan, Mr Ahmed's legal representative, said that Mr Ahmed denied that Mr Rahim and Mr Uddin had ever worked at, or been employed by him at the restaurant. He said that Mr Ahmed had provided information to Immigration Enforcement and that subsequently they had provided the Premises Licence holder, Ms Tahrima Ahmed, with the No Action Notice. Mr Hasan referred to a previous Premises/Personal Licences Sub-Committee meeting where the Saffron Restaurant had had their licence reviewed because of illegal workers and had received a three month suspension of their licence. He stated that Mr Ahmed had no case to answer as here neither Mr Rahim or Mr Uddin

had ever worked at the Nirala Tandoori Restaurant and that therefore he should be allowed to continue with his business, and the police case should be dismissed.

The Chairman then proceeded to ask questions of Mr Ahmed and queried paragraph 13 of his statement whereby he stated that Mr Uddin and Mr Rahim had come to the restaurant to meet their friend, but that page 49 of the Agenda in the Witness Statement of John Donaldson, Immigration Officer stated that Mr Rahim had been encountered in the kitchen preparing food, dressed in chef's white jacket and an apron. Mr Ahmed was asked to explain the difference between not knowing the man and him being in the kitchen, apparently working. Mr Ahmed stated that when he came into the restaurant, after changing upstairs, everyone was sitting at a table when he arrived and he did not see the Immigration Officer arriving. Mr Ahmed stated that he did not know Mr Rahim and did not know why he was in the kitchen.

Mr Ahmed was then asked about paragraphs 18-21 in his statement regarding the checks he undertook on prospective employees of their right to work in this Country. He was asked whether he had any paperwork to prove that the checks had been undertaken. He stated that he had some in his car, but that they were checks on prospective employees that held British passports and once they had shown him a British passport he did not need to undertake any further checks. The Chairman noted that it might have been useful for the Committee to see that paperwork.

Cllr J Henderson then questioned Mr Ahmed and stated that on the paperwork it said he had been the Designated Premises Supervisor since 2011 and asked when he had started doing "right to work" checks. Mr Ahmed stated that if a British passport was provided then no further checks were needed. In respect of point 12 of Mr Ahmed's Statement, he stated that he did not know anything about Mr Uddin or Mr Rahim and was just meeting them for the first time. Point 16 of Mr Ahmed's statement was in conflict in that he said that he had provided all the information that he knew about these two gentlemen but then had claimed that he did not know them and that they were only visiting someone in the kitchen.

Ms Stainsbury, Essex Police County Licensing Officer, spoke about District Licensing Officer Beckett's visit on 30th September when he asked to see the paperwork for the right to work checks undertaken and Mr Ahmed stated that he had not started it yet. He said that the visit took place on a Saturday which was a busy day at the restaurant. When Mr Ahmed saw Mr Beckett's statement, he telephoned him as he was not happy with his statement. Mr Ahmed claimed that Mr Beckett had told him that he would get a chance to explain at the Sub-Committee meeting. Mr Ahmed said that it was very hard, that so many people arrived looking for jobs but they did not all have paperwork so he could not employ them.

Gordon Ashford, Essex Police then asked Mr Ahmed who was working on the 2 days that he said he was off sick, prior to the visit by the Police on 14th September 2017. Mr Ahmed said that a Mr Abdul Islam should be cooking. Mr Ahmed was asked who did he expect to be cooking on the day the Immigration Officers came. Mr Ashford said that Mr Rahim was seen cooking, dressed in a Chef's white jacket and told the Officers that he was on trial as a chef. Mr Ahmed said that there was no way anyone unknown could work in the kitchen and to his knowledge Mr Rahim had not been working. Mr Ahmed was asked whether his business was struggling and he confirmed that it was. He said that it was difficult to employ people, there were staff shortages and he was working 7

days a week. Mr Ahmed said that he had had a heart bypass operation and he did not need pressure; he said the restaurant was in a small town and he had a number of regular customers and they had had a little bit of success there. Mr Ahmed said that it was only British passport holders he did not need to check. He was then asked whether he knew what the minimum wage was and he replied £7.50. Mr Ashford said that one of those persons was seen in the restaurant in August 2017 and checks were then conducted regarding those persons and which was why Immigration had returned in September 2017.

The Chairman then asked the Police to summarise their case and they confirmed that it was essentially about illegal workers and facilitating illegal working. There were people who worked for board and lodging or below the minimum wage, which could aid struggling businesses, and Mr Ahmed had told the Committee that the business was struggling. He referred to paragraph 11.23 of the Guidance at Appendix 3 whereby financial hardship should not be a consideration to revoking the licence if premises were employing illegal workers. Other Indian restaurants operated successfully without an alcohol licence.

Mr Hasan, Mr Ahmed's legal representative then summarised his case and stated that no immigration status checks needed to be undertaken if British passports were provided. The only check that needed to be undertaken was whether the passport was valid or not. This case was in respect of persons he did not know, that so he did not need to undertake any checks.

The Police asked if Mr Ahmed believed that if someone came for training or a trial that there was no duty to undertake any right to work checks.

Mr Hasan stated again that Mr Ahmed did not know Mr Uddin and Mr Rahim, and that the outcome of the No Action Notice meant that there was no case to answer. He said that he upheld all of the Licensing Objectives. Mr Hasan asked that Mr Ahmed be allowed to continue with the Premises Licence and with no restrictions added.

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 the Council's Solicitor and the Legal Administration and Information Officer to leave with them. The Sub-Committee, Council's Solicitor and Legal Administration and Information 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;

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- (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 an application for the Review of a Premises Licence submitted by Essex Police in respect of the premises known as Nirala Tandoori, 14 Brook Street, Manningtree the Sub-Committee's decision is to revoke the licence.
2. It has been determined that the Licence must be revoked for the following reasons:- For the prevention of crime and disorder.
3. Reviews of premises' licences follow where there are concerns that some aspect of the business or its behaviour affects that licence. Where the activity causing concern is so serious, involving criminal activity such as the employment, or possible employment of a person or persons who are disqualified from working because of their immigration status, then a review can be sought without previous involvement of the applicant, here Essex Police.
4. The Sub-Committee's role is to promote the four licensing objectives – here the prevention of crime and disorder – and not to punish, that is the role of others. That said, the Guidance issued under Section 182 of the Licensing Act 2003 does suggest that in certain cases, where the premises have been used to further crime, then revocation should be seriously considered, even for the first incident.
5. Mr Khaled Ahmed has been the Designated Premises Supervisor since 4 May 2011, and his daughter, Ms Tahrima Ahmed has been the Premises Licence Holder since 6 January 2017 of the NIRALA Tandoori Restaurant at 14 Brook Street, Manningtree.
6. We are told that on 30 August 2017 officers from the Police and Her Majesty's Revenue and Customs visited the Nirala Tandoori. On that occasion several members of staff were found at the premises, one of whom disappeared before he could be spoken to, whilst others were vague in their answers, or were unable to produce any identification. A referral was made to the Immigration Service.
7. On 14 September 2017 officers from the Immigration Service attended the Nirala Tandoori where they found 4 men in the kitchen, apparently undertaking various tasks, and a fifth man preparing food in a room next to the kitchen.
8. One of the men in the kitchen, who was dressed in a white chef's jacket and

- apron, which he removed upon the entry of the officers, was ABDUR RAHIM. It transpired that Mr Rahim had no right to work in the UK. Subsequently, on 18 September 2017, Mr Rahim made a claim for asylum.
9. A second male, NIZAM UDDIN, was found in the restaurant: he was wearing black trousers and a pink shirt. It is not clear whether he was working or not; what is clear is that Mr Uddin has no right to work in the UK.
 10. In this case we have been told that no civil penalties have been imposed in respect of either Mr Rahim or Mr Uddin by Immigration Enforcement. Mr Jack Davis, a Chief Immigration Officer, has explained that this decision would have been made by a central office in Manchester, and such decisions are made purely on the basis of the evidence in front of that office at the time, including anything the alleged employer might have said or documents produced by them, and whether or not that evidence reaches the standard of proof, which in such cases we are told is the civil standard i.e. the balance of probabilities.
 11. We have been told that the employment of workers who have no right to work in the UK raises a number of issues, including the possibility for example that they are being paid below the minimum wage, are expected to work long hours, and that tax may not be paid, or paid at the correct rate. The Police have also stated that somebody may not be paid simply in money but that board and lodgings may also constitute payment.
 12. Mr Ahmed has presented the Sub-Committee today with a written proof of evidence, which he then proceeded to read to the Sub-Committee. As part of what Mr Ahmed told the Sub-Committee he said that he understood, and complied with, the requirements for checking the rights of people to work in the UK and although he told the Sub-Committee that he had been undertaking checks, including copying passports, he was unable to produce anything to the Sub-Committee today but said it was "in his car". He also said that the only people he employed were British and having seen their passports, no further checks were necessary.
 13. Mr Ahmed also said that he did not know either Mr Rahim or Mr Uddin, and that on 14 September 2017 he had arrived at the restaurant from his home in Enfield, had changed into his working clothes upstairs and when he came downstairs he found people sitting around talking to the Immigration Officers.
 14. We have also heard from Mr Ahmed's solicitor, Mr HASAN who has reiterated that Mr Ahmed does not know Mr Abdur Rahim or Mr Nizam Uddin; that where training or trial employment is being undertaken checks may not be necessary; and that no civil penalties have been imposed upon Mr Ahmed and the Nirala Tandoori Restaurant.
 15. We are concerned that despite a visit to the Nirala Tandoori on 30 August, and a subsequent visit on 14 September 2017 by Immigration Officers, no documentation was produced to the Sub-Committee today to prove that checks, of any employee, had been undertaken.

16. We view this matter seriously and for the reasons given above, and with some regret, have decided to revoke the Premises Licence for the Nirala Tandoori Restaurant. We note that other similar restaurants remain in business without a Premises Licence, and we hope that this will be true for the Nirala Tandoori Restaurant.

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 4.53 pm

Chairman