

Minutes of **Licensing Act 2003 Sub-Committee**

Meeting date **Tuesday, 17 August 2021**

Members present: Councillor Margaret France (Chair) and Councillors Hasina Khan and Harold Heaton

Officers: Tracy Brzozowski (Customer Services (Enforcement)), Nathan Howson (Enforcement Team Leader (Licensing)), Alex Jackson (Legal Services Team Leader) and Charlotte Lynch (Democratic and Member Services Officer)

20.8 Declarations of Any Interests

There were none.

20.9 Procedure

Members noted the procedure to be used to conduct the hearing.

20.10 Application for a Review of a Premises Licence under the Licensing Act 2003

The Licensing Act 2003 Sub-Committee considered what measures, if any, were appropriate for the promotion of the licensing objectives following an application for a review of the premises licence under Section 51 of the Licensing Act 2003 by Mr Nathan Howson for and on behalf of the Licensing Authority, acting in their role as a Responsible Authority.

Mr Howson (Applicant representing the Licensing Authority) attended in person as did Immigration Officer, Mr Paul Lewin, and the Premises Licence Holder and Designated Premises Supervisor (DPS), Mr Fayzul Islam, to make their representations to the Sub-Committee.

Members were informed that the premises were initially visited following intelligence received by Immigration Enforcement that an individual was working illegally at the business. This was found to be the case.

An update on the immigration case was provided and members were informed that the overstayer was arrested on the evening of the visit and is currently on immigration bail whilst awaiting appeal against deportation. A civil penalty is outstanding on the business.

The DPS was not present during this visit and was said to be absent due to illness. Following further enquiries, it was accepted that Mr Islam was in Bangladesh and could not return due to lockdown restrictions.

During this visit, the Licensing Team Leader (Enforcement) also identified a number of issues including the failure to display the premises licence and notice required by Section 57 of the Licensing Act 2003; Challenge 25 signage not being displayed; no record of staff training; and a lack of knowledge around licensing conditions and objectives.

The Sub-Committee was also advised that a further visit to the premises was undertaken on 5 July 2021 at which time the issues had not been rectified.

In accordance with the hearing procedure, Mr Islam was given the opportunity to make representations to the sub-committee and to ask questions of Mr Howson and Mr Lewin.

Mr Islam explained that he was unaware that the overstayer had been hired whilst he was in Bangladesh and maintained that the responsibility for hiring staff was within the remit of the Director of Noy Bhair Restaurant Ltd., Mr Rezwon Hussain.

No arrangements had been made to transfer the premises licence and vary the DPS, despite the restaurant manager having received advice on this from the Licensing Authority in February 2021. Mr Islam informed the sub-committee that he was of the belief that it was sufficient for a different individual with a personal licence to be at the restaurant whilst he was out of the country.

In response to a question from Mr Howson regarding the specific actions taken by Mr Islam to ensure there was appropriate DPS cover in place at the premises during his absence, Mr Islam advised that he had informed his Director, Mr Hussain, of his trip and that Mr Hussain had reassured him that Mr Abdul Malique would take over. Members noted, however, that this account conflicted with Mr Malique's statement on the evening of the initial visit that he had "worked at the premises approximately 18 months ago but that he had been furloughed and this was his first night back".

In response to a member query, Mr Islam confirmed he had worked at the premises for approximately 8 years. Members commented that, having worked at the premises for such amount of time and being the DPS, Mr Islam should have a sufficient understanding of how the restaurant operates and the requirements around licensing conditions and objectives.

It was queried whether Mr Islam now understood the measures he should have taken before leaving the country, to which Mr Islam responded that he would have rang the Licensing Authority for advice. When asked why he did not do this initially, Mr Islam stated that this was because he had been informed that someone else would be hired to take over on an interim basis until he returned.

In summarising, Mr Islam emphasised that he had no involvement in the employment of staff at the premises and that, with regards to the overstayer, he would not have been responsible for checking any 'Right to Work in UK' paperwork regardless of whether he was in the country at the commencement of the overstayer's employment.

The Chair thanked everyone for attending and explained a decision notice would be issued to the Licence Holder within 5 working days.

After careful consideration, members resolved:

- 1. to issue the premises licence holder with a stern warning to lie on his licensing file;**
- 2. to suspend the premises licence for a period of 2 months; and**
- 3. to modify the conditions of the licence by adding a condition to Annex 3 of the premises licence.**

Following consultation with officers the following day, the wording of this condition was agreed as follows:

No person shall be employed at the premises in any capacity, nor be permitted to work whether paid or unpaid, for whatever duration, unless an acceptable document has been produced which confirms their identity and shows their entitlement to work in the United Kingdom. Such document shall be copied in a legible format and such copies shall be kept on the premises for the whole time that person is working at the premises and for a further 6 months on a person's work ending. These copies shall be produced to an authorised officer, immigration officer or police constable on request. The above checks and retention of records must be repeated if the same person is engaged again after termination of previous employment at the premises or conclusion of a work placement. For the purpose of this condition, an acceptable document is one which is contained within Annex A of the Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales, produced on 6th April 2017.

The reasons for this decision are as follows:

1. Members had regard to the statutory guidance at paragraph 11.27 issued under Section 182 of the Licensing Act 2003 which provides that criminal activity such as use of the licensed premises for employing a person who is disqualified from work in the UK by reason of their immigration status should be treated particularly seriously;
2. There were a range of offences being committed at the premises which means the prevention of crime and disorder objective was not being promoted;
3. Members did not consider the explanation of the premises licence holder that the illegal worker had only just been hired for that night to be credible;
4. There was potential for other harms arising from employment of those without the right to work in the UK such as non-payment of the national minimum wage and defrauding of HMRC through non-payment of taxes;
5. The premises licence holder denied being responsible for hiring staff and in response to a question from the legal officer confirmed that, even had he been in the UK, he would not have had responsibility for hiring staff or checking their immigration status. In such circumstances, members considered that a

recurrence, without compliance with the condition imposed and a change in the attitude of the premises licence holder, was likely;

6. The premises had not demonstrated any improvement at the follow up inspection on 5 July 2021 so appropriate controls needed to be imposed by the licensing authority and then complied with; and

7. The premises licence holder had not convinced members that he would, of his own motion, bring about the necessary changes to ensure that only those with right to work in the UK were hired so a condition was required.

Members also recommended that the premises licence holder takes heed of the recommendations of licensing officers regarding the proper management of the premises.

Any party to the hearing aggrieved by this decision have the right to appeal to the local magistrates' court within 21 days of receiving notice of this decision.

Chair

Date