

Minutes of	Licensing Act 2003 Sub-Committee
Meeting date	Wednesday, 15 March 2023
Committee Members present:	Councillor Matthew Lynch (Chair), and Councillors Gordon France and Tommy Gray
External attendees:	Azimah Sultana – UK Border Agency, Immigration Compliance and Enforcement Mr Monir Uddin, Premises Licence Holder Mr Mohammed Hussain, Maya Solicitors
Officers:	Usman Gazra (Enforcement Officer (Licensing)), Tracy Brzozowski (Customer Services Manager (Enforcement)), Nathan Howson (Enforcement Team Leader (Licensing)), Alex Jackson (Legal Services Team Leader) and Clare Gornall (Democratic and Member Services Officer)
Apologies:	Councillor Dedrah Moss

A video recording of the public session of this meeting is available to view on [YouTube here](#)

20.1 Declarations of Any Interests

There were none.

20.2 Procedure

The Chair outlined the procedure to be followed at the hearing.

20.3 Determination of Application for the review of a Premises Licence, Daisy Tandoori 44 Steeley Lane, Chorley

The Chief Executive submitted a report for the Licensing Act 2003 Sub-Committee advising members of an application for the review of a premises licence served by Mr Nathan Howson for and on behalf of the Licensing Authority, Chorley Borough Council in its role as Responsible Authority in respect of the premises Daisy Tandoori, 44 Steeley Lane, Chorley.

The Premises Licence Holder (PLH) Mr. Monir Uddin, was present, and he was accompanied by his legal representative, Mr Mohammed Hussain, of Maya Solicitors.

The Applicant for Review, Mr Nathan Howson, Licensing Enforcement Team Leader, was present.

Ms Azimah Sultana, UKBA Immigration Compliance and Enforcement (Responsible Authority who had made representations in respect of the application to review), was present.

The Sub-Committee were asked to approve the requests received under Regulation 8, allowing eligible parties to the hearing to speak. These requests were approved by the Sub-Committee.

Presentation of the report

Mr. Usman Gazra (Enforcement Officer - Licensing), presented the Committee report which explained that on 24 January 2023, an application for review of the premises licence was received from Mr Nathan Howson, Licensing Enforcement Team Leader for and on behalf of the Licensing Authority, Chorley Borough Council. The application concerned the Prevention of Crime and Disorder being undermined at the premises.

The grounds for review were as follows:

The licensing objective of The Prevention of Crime and Disorder is being undermined at the premises in that a person who was not permitted to work in the United Kingdom by reason of his immigration status was found to be working on the premises. There was another person found to be working who was working in breach of his immigration bail conditions.

Copies of information received in relation to visit undertaken by the Home Office Border Agency officers and a previously issued caution by Chorley Borough Council was provided at Appendix 2b and 2c to the report.

Mr Gazra advised following consultation with responsible authorities, Home Office immigration enforcement made representations to the application. The representations were provided at Appendix 3 to the report.

Presentation of Case by the Applicant

The Applicant for Review, Nathan Howson, Licensing Enforcement Team Leader for and on the behalf of the Licensing Authority, explained that an application for review of the premises licence was submitted on the grounds that the licensing objective of The Prevention of Crime and Disorder, was being undermined at the premises.

Mr Howson explained that the application for review arose from a targeted immigration visit to the premises on 21.10.2022 which revealed two persons on the premises who were not entitled to work in the UK, one overstayer who was arrested and one in breach of his bail conditions entitled to be in UK but who did not have the right to work.

Mr Howson referred to Appendix 1 of the report which was an email from Immigration Compliance and Enforcement showing another overstayer was arrested at premises in 2013 so this current incident was not isolated.

He also cited Appendix 2 to the report - a simple caution administered to the Premises Licence Holder for an offence under S136 of the Licensing Act 2003. The circumstances were that the premises licence was suspended following non-payment of the annual fee and the Premises Licence Holder continued to carry out licensable activities (i.e. serving late night refreshment). Mr Howson clarified that the premises licence holder admitted the offence at the time the caution was issued on 3.2.2020.

During questions to the applicant by the Sub Committee, Mr Howson stated that the premises licence holder has a legal duty not to employ persons who do not have a right to work and further that in order not to incur a civil penalty, it was necessary to provide evidence of having carried out right to work checks on staff.

Representations by Responsible Authority

Azimah Sultana, employee of UK Border Agency (UKBA) Immigration Compliance and Enforcement (Responsible Authority who had made representations in respect of the application to review), gave details of the visit to the premises by immigration officials on the evening of 21.10.22.

Ms Sultana explained to the Sub Committee that on the night in question her team had encountered three males in total, one being the employer and other two suspected of being employees. Both men were witnessed behind the counter wearing aprons and were found with food on their shoes.

Once immigration enforcement officers had entered the premises, one male was found in the back garden with his apron scrunched up in his hands. He had difficulty providing the correct spelling of his name and date of birth. He was found to be an overstayer and arrested.

The other male was in the kitchen with his apron on top of the fridge, and a hot cup of tea left on there.

Both males were questioned to ascertain their immigration status. One male was found to be an overstayer and arrested. The other male, who was found to be in breach of bail conditions, was removed from the premises and escorted back to the detention centre.

The employer, Mr Uddin (premises licence holder) claimed the two males on the premises were not employees, and he had known them for several years. He said that they arrived approximately 7/8pm and that he had allowed them to use the kitchen to make food at no charge. Ms Sultana stated that due to the lack of evidence the two males were employees, no civil penalty was issued.

During questions by Mr Howson, Ms Sultana confirmed that in her view the two males found on the premises were working on the premises.

Presentation by the Premises Licence Holder

Mr Mohammed Hussain, on behalf of Mr Uddin the Premises Licence Holder, made submissions to the Sub-Committee. He also provided supporting documentation in the form of a letter by the accountancy firm used by the premises confirming details of three employees and NI numbers for tax purposes, (one of which was Mr Uddin), which did not include the two males on the premises on 21.10.22. It was noted that the

supporting documentation had not been provided in advance of the hearing. The applicant viewed the document and he and the Sub Committee agreed that the letter be accepted but advised the Sub Committee that this evidence hadn't been provided in time and so couldn't be tested and invited them to apply little weight to it.

Mr Hussain made the following representations in support of the premises licence holder:-

- Mr Uddin was a responsible premises licence holder, having regard to legal obligations, rules and regulations associated with the premises licence
- There was no civil penalty issued due to lack of evidence the two males were working at the premises
- The premises licence holder maintains the two males were visitors he allowed to make food in the kitchen
- The premises licence holder was therefore not in contravention of the Licensing Act 2003 (s.182 guidance) or relevant Immigration laws
- With regard to the caution of 3.2.2020, the non-payment of fees was an oversight and they were subsequently paid. The premises licence is currently in force
- Mr Hussain suggested that repeat visits by immigration enforcement (a reference to a previous visit in 2013) and resulting in no action on the visit on 21.10.22 suggests that intelligence provided to Immigration officials may be malicious

Mr Uddin answered questions by the sub-committee and parties to the hearing with the assistance of Mr Hussain acting as an interpreter in his native language.

The Sub-Committee sought to clarify the number of staff normally on premises and on the night of 21.10.22. During questions by the Sub Committee the following responses were given:-

- it was stated by Ms Sultana, UKBA that during the visit to the premises on 21.10.22 there was a male outside claiming to be a delivery driver who did not enter the premises
- Mr Uddin through Mr Hussain stated that he operates as head chef, overseeing the business and that he also employs an assistant sous chef and one other employee as a delivery driver.
- Mr Uddin stated that the delivery driver working on 21.10.22 was self-employed and used on a temporary basis, hence he was not listed on the accountant's letter as an employee. It was his first night working for the premises
- Mr Uddin stated that he often allowed friends to make food in the kitchen at the premises.
- Mr Uddin stated that he knew the two males in question on 21.10.22 from Bangladesh, they had just sat down having finished making food for themselves in the kitchen
- Mr Uddin claimed that on 21.10.22 he was working by himself in the kitchen, with the only additional member of staff being the delivery driver
- Mr Uddin said that his busiest hours of trade were 6 – 9pm and that his busiest day was Saturday. Fridays were "normal" days, not busier than usual
- Ms Sultana informed the sub-committee that the premises had been subject to visits by Immigration Enforcement on two occasions in 2013 and one on Friday 21 October 2022.

- Mr Uddin stated that he carries out right to work checks for employees by keeping copies of documentation such as passports and National Insurance numbers. However, Ms Sultana, UKBA stated that no such documentation was offered during the visit on 21.10.22. Mr Hussain suggested that as the two males were not employees, the documentation would not have existed for those individuals.
- When questioned by Usman Gazra, Licensing Enforcement officer Mr Uddin stated that typically he had two or three people working on the premises, and that mostly it would be two. He said that he employs a separate delivery driver which does not include kitchen staff. Mr Gazra referred to Annex 2 of the premises licence (agenda page 10 of the licensing sub committee papers), which states that "There will be a minimum of three staff on duty at all times".

Summing Up / Concluding Statements

Mr Nathan Howson in his summing up, made the following points:

- Regarding the decision not to issue a civil penalty- it is a necessary and important consideration- but not the only one. The Sub Committee should consider on the balance of probabilities, whether evidence supports illegal workers and, if so, the Licensing Objectives are engaged and you must take such action as is appropriate to promote objectives.
- The Sub Committee must have regard to Section 182 Guidance which in this case states that "certain criminal activity should be treated particularly seriously i.e. use of licensed premises for employing a person who is disqualified from working in UK". It is expected that revocation of licence, even in first instance, should be seriously considered.
- Given the aggravating factor of previous overstayer being arrested and a licensing offence having been admitted at the premises, he invited the Sub Committee to revoke the licence.

Mr Hussain, on behalf of the premises licence holder reiterated that Mr Uddin maintains he did not employ the males at the premises on 21.10.22 as staff and he will ensure that the licensing objectives and conditions of the licence are met moving forward.

RESOLVED:

Members took account of the application and relevant representations, the Council's Statement of Licensing Policy, the Licensing Act 2003, Licensing Objectives, the Section 182 guidance. After careful consideration members resolved to revoke the premises licence for the following reasons:

1. Members directed themselves that their task if they made any determination on whether the two men were working at the premises was on a balance of probabilities. They had food on their shoes, would not need to be in a working area open to the public to eat and they were both wearing aprons which are consistent with working.
2. Members noted that Paragraph 11.27 of the national Section 182 guidance says employing those without the right to work in the UK should be treated particularly seriously

3. Members did not attach weight to the fact that one of the two men had difficulty spelling their name in English (their non-native language).
4. In relation to the accountant's letter produced at the hearing and there was no opportunity for the Licensing Unit to verify it and in any case only reflected what information may have been provided to the accountant.
5. Members did not attach weight to allegations of malicious reports since their decision was based on what Immigration officers discovered and witnessed, and not on reports leading to the visit.
6. It emerged during questions to the Premises Licence Holder from Chair that another employee was not referred to in the letter from the accountant.
7. There were conflicting accounts from the Premises Licence Holder about staff on duty on the night of the visit.
8. No examples of documentary checks were offered by the Premises Licence Holder to Immigration Enforcement on the visit or in advance of the sub-committee hearing, although the accountant's letter was provided unsolicited at the hearing so this demonstrated that documents could easily have been provided beforehand, especially as these would be in the control of the premises licence holder and easier to produce than asking an accountant.
9. It was not the case that the premises were always run in accordance with the law as the premises licence solicitor claimed. The caution in 2020 was accepted by the Premises Licence Holder as it could not be imposed by the Council.
10. On Mr Uddin's evidence he was in breach of a condition attached to the Premises Licence requiring at least 3 people on duty at all times. His legal representative made no reference to this in his summing up so members had nothing before them by way of a defence or mitigation on this point. It appeared that this breach of condition was chronic and repeated and therefore serious.

The premises licence holder may appeal to the magistrates' court within 21 days of notice of this decision.

Councillor Matthew Lynch
Chair of the Licensing Act 2003 Sub-Committee

Chair

Date