

EASTERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE EASTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 15 JANUARY 2020 AT WEST WILTSHIRE ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN IN RESPECT OF Application for a Review of a Premises Licence - Tale of Spice, 9 North Street, Pewsey

Present:

Cllr Allison Bucknell, Cllr Trevor Carbin and Cllr Peter Hutton

Also Present:

Gavin Griffiths – Home Office Immigration Officer

Wiltshire Council Officers

Sarah Marshall – Senior Solicitor

Jemma Price – Public Protection Officer, (Licensing)

Kevin Fielding – Democratic Services Officer

Lisa Pullen Democratic Services Officer (observing)

Relevant Representations

Frank Fender – On behalf of A Taste of Spice, Pewsey

Mr Abul Jashim - Premises licence holder and DPS, A Taste of Spice, Pewsey

7 Election of Chairman

Nominations for a Chairman of the Licensing Sub Committee were sought and it was

Resolved:

To elect Councillor Peter Hutton as Chairman for this meeting only.

8 Apologies for Absence/Substitutions

There were no apologies or substitutions.

9 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 5-11 of the Agenda refers).

10 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

11 **Declarations of Interest**

There were no interests declared.

12 **Exclusion of Press and Public**

The procedure to be following in the Hearing is governed by the Licensing Act 2003 (Hearings) Regulations 2005.

Regulation 14 provided that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

Under this principle, the Licensing Authority could exclude the public from all or part of the hearing, as considered appropriate.

In view of the representations and evidence that had been submitted, the Sub Committee was asked to consider whether the public should be excluded from any part of the hearing in this instance.

13 **Licensing Application**

Application for Review of a Premises Licence: Tale of Spice, 9 North Street,
Pewsey, Wiltshire, SP9 5ES

Emma Batchelor - Licensing Officer, Wiltshire Council presented her report and introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration.

Points made by the Licensing Officer included:

- That the hearing was being held to consider the application by Home Office Immigration Enforcement for a Review of the premises licence held by Mr Abul Jashim for Tale of Spice, 9 North Street, Pewsey, Wiltshire, SN9 5ES and which was accepted as a valid application. The application was made on the grounds set out below;
- A visit to the premises on 20 September 2019, identified seven persons found to be working illegally.
- Previous visit on 18 August 2018, identified five persons found to be working illegally.
- Previous visit on 4 April 2014, identified six persons found to be working illegally.
- That the premise had held a licence from April 2011.
- That a review of the licence had been requested by Home Office Immigration Enforcement on the grounds that the premises licence holder had failed to meet the licensing objective of the prevention of crime and disorder, due to illegal working identified at the premises.
- That the review process required a public notice to be posted on the premises for a period of 28 days together with a copy of the notice posted at the offices of Wiltshire Council, Monkton Park, Chippenham. During the consultation period Three Representations of support were received.
- In accordance with Section 52 (3) of The Licensing Act 2003 the Licensing Sub Committee was required to take such steps as it considered necessary for the promotion of the licensing objectives.

The licensing objectives were: -

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- and the Protection of Children from Harm.

Such steps available to the committee were: -

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the Designated Premises Supervisor
- To suspend the licence for a period not exceeding three months

- To revoke the licence
- Or to determine that No steps are necessary

Key points raised by the Review Applicant (Gavin Griffiths – Home Office Immigration Officer Southwest England) were:

- That he works for the Immigration Office who deal with everything within the UK border.
- There is a prevalence of illegal workers in the licensing trade
- Serious crime can be linked to exploitation of vulnerable individuals – encouraging the breaking of laws, smuggling and exploitation of minors. Working illegally is a criminal offence with a custodial sentence and unlimited fine. Employers are required to undertake checks on workers under the Immigration Asylum and Nationality Act 2006
- That the premises were visited by Home Office Immigration Officers on the 20 September 2019.
- That nine people were found to be in the communal kitchen, behind the bar and waiting tables. Five people were found to be working at the premises illegally with no right to work. Three people were given Immigration Bail at the scene and two people were arrested.
- That Home Office Immigration Officers had conducted visits during April 2014 and August 2018 and that civil penalty notices had been issued for £15,000 in April 2014 and £20,000 in August 2018 and That the penalties were still outstanding on the civil penalty notices that had been issued.
- Reference was made to paragraph 11.27 of the Amended Government Guidance issued under s.182 of the Licensing Act 2003 in particular that Police and Licensing Authorities seek to deter the crimes listed in paragraph 11.27 and revocation even for a first offence should be considered as the activity is seriously undermining the licensing objectives of prevention of crime and disorder and that revocation of the licence is sought in this case.

Questions were asked of the Immigration Officer (Review Applicant) by the Sub Committee members as follows:

Q What was the £40,000 fine?

A This was the civil penalty notice from the most recent September 2019 operation.

Q Enforcement?

A Yes it was now with the Civil Penalties team. There was an objection as the status is that the penalty is being maintained. Could move to the civil courts if contested.

Q Was the Licence Holder and one of the workers present on this visit were also present on a previous visit in August 2018 where the worker was found to be in breach of immigration law with no right to work?

A Yes – was deemed to be working illegally in 2018.

Questions were asked of the Immigration Officer (Review Applicant) by the Mr Fender for the Licence Holder as follows:

Q A person found on more than one occasion was news to Mr Fender. Is there anything in the Application Pack?

A I only received the agenda supplement a few minutes ago but the individual was there in 2014 and 2018.

Q This individual is not mentioned in the report. Is it a legal duty for an employer to undertake checks? A person found on more than one occasion was news to Mr Fender. Is there anything in the Application Pack?

A I refer to page 16 of the Agenda Supplement paragraph 3.16 – 3.18 and s.35 of the Immigration Act 2016 which is the offence of employing an illegal worker. Not doing these checks would be negligent.

Q I accept this should be done but wanted to know if there was any specific legal requirement.

A *No answer required to this question*

Key points raised by Frank Fender on behalf of the Premises Licence Holder were:

- The author of the objection notice Mr Barker is here today as a member of the public and although he is not called as a witness he is here if you need clarification.
- That Abul Jashim - the premises licence holder and DPS is apologising for the situation he finds himself in today. He deeply regrets this situation.

- The purpose of a review hearing is for the Licensing Sub Committee to establish what licensing objectives are being promoted not to determine the guilt or otherwise of the Licence holder.
- Paragraph 2.5 of the Government Guidance refers to reviews as a part of the regulatory process and not part of a criminal law procedure.
- Although Mr Jashim had been the premises licence holder since April 2011, the premises had been under the management of other limited companies.
- Although Mr Jashim was the premises licence holder during this time, he was not responsible for the employment of staff – that function was carried out by the directors of the limited companies which effectively managed the premises.

This appeared to be confirmed in the Immigration application papers, when they say that previous Immigration visits to the premises (in 2014 and 2018) resulted in civil penalty notices being issued – and these were issued to the limited companies or employers and not to the License Holder.

- The civil penalty notices were not issued to Mr Jashim and he was not responsible for employing the staff at that time.
- That the premises had never caused any issues for any of the Responsible Authorities in the years that they have been operated as a restaurant other than the apparent immigration issues in 2014.
- That Mr Jashim had a very good track record of managing a licensed premise without causing any concerns. No alleged breaches of licence conditions, no alleged offences in respect of licensing.
- The Review application by Immigration Enforcement was advertised and parties were invited to make representations. Three letters of support for the way the premises were managed were sent to the licensing authority (page 31 – 33 of the agenda reports).
- The visit on 20 September 2019, nine staff were encountered, five not entitled to work in the UK and four were entitled to work in the UK. That the interviews of the alleged illegal workers were contentious. Illegal working is not happening in every case. There is much to be proved that an employer knowingly employed a person not entitled to work. The Licence holder did not knowingly employ illegal workers.

- The civil penalty notice was issued to the limited company, but I have heard that the objection notice has been refused by Immigration. There was no period of time for the Ltd company owner to appeal the decision and it has not been decided whether to lodge an appeal.
- Objection notice – that the alleged workers were volunteers to help at the Pewsey carnival, and not paid workers. The Pewsey carnival asks people to come to Pewsey and volunteer to help stall holders or help at the Carnival. No contract of work was offered but yes, they were given food as a reward for helping at the weekend.
- Since the visit the licence holder has sought advice from Immigration and Licensing consultants and put in place rules and has now completed employment records and due diligence sheets. I have these, but they were only handed to me yesterday but if you wish to see these you may. It may be seen that these were only done after the visit by the Immigration Service, but checks have been done but they were not documented.
- That Right to Work checks had been carried out, but not documented prior to the September 2019 Home Office visit.
- That the premises licence holder accepted that failures had happened, and documentation had not been kept.
- Paragraph 13 – 26 of the report online states that the Immigration Service are seeking a revocation of the premises licence and refers to case law in order to persuade you and justify why you should revoke the licence. They are inviting you to revoke because that is what has happened in other cases and refer to case law inviting you to punish licence holders by revoking their licence. There has been no dialogue with the Immigration Service. We take issue with the claim that conditions are insufficient as breach of conditions is a serious matter – an unlimited fine or prison or both.
- Paragraph 2.14 of the officer's report provides for possible sanctions. The licence holder accepts there have been shortfalls but does not accept he knowingly employed people with no right to work.

He accepts that sanctions are likely to be imposed.

- I ask you to pay particular attention to the guidance – paragraph 2.10. We believe the most appropriate and proper sanctions in this case are to modify the conditions and we would propose certain conditions;
 - i) The premises licence holder will operate a full HR Management system where all relevant documents, to prove entitlement to work, are stored for each individual member of staff.

- ii)* All copies of relevant documents for members of staff will be retained for a period of 24 months post termination of employment and will be made available to Police, Immigration or Licensing Officers upon request. So the records can be shown for all members of staff.
 - iii)* The premises licence holder will work with an immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.
 - iv)* No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work. This includes any work undertaken on a trial period or a part time basis.
 - v)* The premises shall be subject to an unannounced compliance audit by a suitably qualified licensing consultant at least once every three months for a period of 12 months. The audit shall include compliance with conditions and the right to work of those working at the venue. A copy of these audits will be made available to the police and licensing authority within one month of the audit taking place.
- A visit could therefore occur at any time and act as a 'spot check'.
 - Licence conditions are considered appropriate and may include the licence holder requiring a right to work checks on all workers or undertaking a right to work check.
 - The imposition of conditions were an appropriate and proportionate check.
 - There are no other representations from the Police or other authorities in this case.
 - Since the visit the licence holder has taken pro-active steps to ensure this is never to be repeated again.

The Sub Committee stated that it takes its role seriously and understands what it can and cannot do. This is a well-run business and the Sub Committee would have expected all documents to be in place. Can the Sub Committee be reassured that the record keeping extends to training and health and safety

which is a major part of a well-run business? The Sub Committee will act upon the evidence it has heard today.

Questions were asked of the Premises Licence holder by the Sub Committee members as follows:

Q You assert that it is a well-run business, but we have evidence that it is well run in every aspect save for what is before us today.

A I am not responsible for employment.

Q Who deals with employment?

A Mr M H Yousain deals with employment.

Q You have duties and responsibilities - what questions do you have to check that people who work at your business are legal? How do you check?

A Mr Fender asked the Licence-holder who does the right to work checks?

Q It is your responsibility for people working at your premises or volunteering. Were you aware that was your responsibility? Were you aware as DPS? How do you keep up to date with changes in legislation? If the law changes how do you find out the law has changed or there is new legislation, so you can comply?

A I check their passports.

Q That does not answer my question. How do you keep up to date with the legislation you have to comply with to run your business?

A Mr Fender replied on behalf of the Licence-holder that no changes in immigration law, but it is just that the immigration service are more proactive. Licence holders do not keep up to date until something happens in that regard. The answer is that he doesn't. Moving forward is that checks have been done by implementing the proposed conditions. The immigration consultant can keep these premises updated in law, so we can promote the licensing objectives.

Q The suggestion that is someone there for volunteering that doesn't constitute work – the advice we have received is that volunteering does constitute work for right to work purposes.

A Mr Fender replied on behalf of the Licence-holder that the Licence Holder did not believe volunteers needed the right to work. He has now got advice and knows that volunteers do need the right to work.

Q Regarding the revocation of the licence for the first instance, you are trying to persuade us not to revoke the licence, but this is not the first instance for this premises? The suggestion that is someone there for volunteering that doesn't constitute work – the advice we have received is that volunteering does constitute work for right to work purposes.

A Mr Fender replied on behalf of the Licence-holder that the Licence Holder did not believe volunteers needed the right to work. He has now got advice and knows that volunteers do need the right to work. This is the first time the Licence Holder has had a review.

Q But not the first time he had illegal workers?

A Mr Fender replied on behalf of the Licence-holder that the Licence Holder does not deal with employment.

Q Did you know that checks needed to be carried out?

A Mr Fender replied on behalf of the Licence Holder – No.

Q How many people are normally employed on a Friday night?

A It was the Carnival weekend and other people arrived to help out.

Questions were asked of the Premises Licence holder by the Immigration Service as follows:

Q Were the five individuals volunteers at the carnival or sent by the business to work at premises or were they sent to work at the carnival?

A Mr Fender replied on behalf of the Licence-holder that One of the individuals said they got the job over the internet. We don't know. Were people sent by the boss?

A The Licence holder said four turned up and one was sent by the boss.

A Mr Fender asked the Licence Holder what do you do at the Carnival?

A The Licence Holder said they have a stall outside.

Q Is the Immigration Consultant the same as the one who prepared the CPN?

A Mr Fender replied on behalf of the Licence-holder that it is an independent consultant as it is dangerous to nominate an individual in case the condition cannot be complied with if the individual is not available. Mr Fender further stated that the Immigration Service will have to carry out checks.

Q The Sub Committee asked Pewsey Carnival and volunteers and they are aware the Carnival puts out a shout for volunteers. Did you advertise for your business to have volunteers on the website?

A The Licence Holder said No.

Q So Pewsey Carnival ask for volunteers and they turned up to help at your restaurant?

A The Licence Holder said they didn't come to my restaurant as they didn't know me. Mr Fender on behalf of the Licence-holder said there seem to be a lot of social media sites where help and staff are sought.

Q The Sub Committee said they expect to see something in evidence and they cannot understand how they can see something for a carnival and the end up being in a restaurant.

Q The Sub Committee asked the Immigration Service if they were aware of the Carnival?

A The Immigration Service said they were made aware at 3 pm but there was no stall outside of the restaurant when they arrived.

The Sub Committee said to the Licence Holder that there seemed to be a lack of communication between the owner and the business. We want to see this improve and it is good that you acknowledge you have made some mistakes.

The Licensing Officer and the Immigration Service did not wish to make any closing submissions.

Mr Fender for the Licence Holder stated that any sanctions must be appropriate and proportionate and to revoke the licence today would close a restaurant and a family business and would ask whether that would be a proportionate response in this case. The Licence Holder has admitted he has made mistakes, but the business is a credit to the community. Since the 20 September visit there has been no evidence of any wrong doing since that date and these premises are not causing any issues. We have submitted modified conditions re maintenance of records and HR system to capture documents etc to ensure the mistakes are not repeated. We would ask you not to revoke.

The Sub Committee members sought clarification on some points before retiring to consider the application and were accompanied by the Senior Solicitor and the Democratic Services Officer.

The Sub Committee then retired to consider the application at 3.10pm

The Hearing reconvened at 3.45pm

Following the deliberations of the Sub Committee Members, the Solicitor for the Council made a statement of material legal advice given in closed session as follows:

That revocation would not mean that the business would close, but that no alcohol and late-night refreshments could be served. The parties made no further submissions on the material legal advice given to the Sub Committee.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council.

Resolved:

The Eastern Area Licensing Sub Committee in respect of the Tale of Spice, 9 North Street, Pewsey, resolved as follows:

- 1. To remove the Designated Premises Supervisor – Mr Abul Jashim.**
- 2. To add a condition to the Licence that all relevant records must be maintained and retained accordingly of the right to work of any person working at the premises. Such records to be made available for inspection on demand by any Responsibility Authority.**
- 3. In order for the above condition to be actioned and for a new Designated Premises Supervisor to be put in place at the Premises, that the Premises Licence KK/PL0274 be suspended for a period of 3 months until 16 April 2020.**

Reasons for the Decision

The Sub Committee was of the view that the evidence presented by the Home Office (Immigration Enforcement) and the Licensing Authority demonstrated that the Premises Licence Holder/Designated Premises Supervisor ('DPS') had failed to effectively manage the premises so far as the employment of staff were concerned and had failed to actively promote the licensing objective of the prevention of crime and disorder.

The Premises Licence Holder had been found to have employed or retained staff as volunteers at the business who did not have the relevant permits to work in the United Kingdom ('the UK'). The Premises Licence Holder had not kept sufficient records to prove to the Responsible Authorities that any staff working at the Premises were legally able to work and had not updated himself nor undertaken appropriate training on the employer's legal requirements needed for the employment of staff in particular to take steps to manage the business to ensure staff who were employed or undertaking volunteering work at the business had the relevant permits to work in the UK.

The Sub Committee determined that the Premises Licence Holder had failed to comply with his obligations in respect of the following licensing objective: -

- The Prevention of Crime and Disorder.

In reaching its decision, the Sub Committee took account of all the written representations contained within the Agenda and the two Agenda Supplements, in addition to the oral arguments presented at the hearing and made on behalf of the Review Applicant (Home Office - Immigration Enforcement), the Public Protection Officer (Licensing), the Premises Licence Holder, Mr Abul Jashim and the representative for the Premises Licence Holder, Mr Frank Fender.

The Sub Committee also considered and took account of the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 52); the four licensing objectives, the guidance issued under Section 182 of the Act (in particular paragraphs 11.27 and 11.28) and the Licensing Policy of Wiltshire Council.

Conclusions

The Sub Committee acknowledged the Premises Licence Holder's apology and the efforts made by the Premises Licence Holder since the visit on 20 September 2019 to ensure where applicable that staff and volunteers held the appropriate permit to work in the UK and the steps the Premises Licence Holder had taken since the visit.

However, the Sub Committee also noted that the Premises Licence Holder had held the Premises Licence since April 2011 and was the Premises Licence Holder when the two previous visits from the Immigration Service took place in 2014 and 2018. The Sub Committee were mindful that the s182 guidance (paragraphs 11.27 and 11.28) considers the employment of persons not permitted to work in the UK to be criminal activity which should be treated particularly seriously, and revocation of the Licence should be seriously considered even in the first instance.

In view of the evidence heard, the Sub Committee determined that they did not have confidence in the ability of the Premises Licence Holder as DPS to uphold the licensing objective to prevent crime and disorder in future. In particular the Sub Committee were concerned that the Premises Licence Holder appeared to have been unaware of all his legal responsibilities concerning the employment of illegal workers which applied to

volunteers and even where he had an arrangement with the owner of the business so far as the employment of staff was concerned.

The Sub Committee concluded that in this case the removal of the Designated Premises Supervisor, the imposition of an additional condition on the Premises Licence and a suspension of the Premises Licence for a period of 3 months was both proportionate and necessary to meet the licensing objective of the prevention of crime and disorder.

Right to Appeal and Effective Date of Decision

The Sub Committee informed the parties that the Premises Licence Holder, the party that applied for the review and any Responsible Authority or Interested Parties who have made representations may appeal the decision made by the Licensing Sub Committee to the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision. The decision of the Licensing Sub Committee does not take effect until the end of the period for appealing against that decision. In the event of an appeal being lodged, the decision made by the Licensing Sub Committee does not take effect until any appeal is heard and finally determined.

The meeting closed at 3:46pm.

(Duration of meeting: 14:00-15:45)

The Officer who has produced these minutes is Kevin Fielding, of Democratic Services, direct line , e-mail

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