

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on WEDNESDAY, 6 DECEMBER 2017 at 10.00  
am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, A Gerard and E Hicks

Officers in attendance: B Ferguson (Democratic Services Officer), E Smith (Solicitor)  
and A Turner (Licensing Team Leader)

Also Present: Mr Ahmed (Premises Licence Holder – Radhuni), Mr Clarke (Immigration Officer - Essex Police), Mr Miah (Premises Licence Holder – Razza), Ms Powell (Licensing Officer - Essex Police), and Mr Wilkinson (Solicitor - Mr Miah)

**LIC35 ITEM 2 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE  
UNDER THE LICENSING ACT 2003 – RAZZA**

As the Premises Licence Holder for the first item listed on the agenda had not arrived, the Chairman moved the item regarding the application in respect of Razza forward in the proceedings.

The Chairman explained procedure and introduced the panel to Mr Miah and his representative, Mr Wilkinson. The Licensing Team Leader presented her report to the panel, explaining why the premises licence was under review and what decisions the Committee could make in respect of the review. No questions were asked at this point.

At the invitation of the Chairman, Ms Powell presented her report to the panel, outlining the Police's case for revocation of Mr Miah's premises licence on the grounds that the 'prevention of crime and disorder objective' of the Licensing Act 2003 had been undermined.

In response to a question from Mr Wilkinson, Ms Powell said Essex Police had been working with local businesses to ensure they were abreast of new legislation. However, she said she would expect business owners to keep themselves informed and added that 'Right to Work' checks were not new and had been in force since 1996.

Councillor Gerard asked if the onus was on the licence holder to keep themselves informed of new legislation. Ms Powell said it was but guidance was available in the form of free subscriptions, which updated subscribers on any changes to the law. She added that guidance was also offered by the police when they carried out random checks on licenced premises; however, on this occasion the review had been intelligence led where information received by the Police had pointed to a clear breach of the law.

Mr Wilkinson asked a number of questions relating to individuals mentioned in the report. Ms Powell said two men had been arrested for working illegally at Razza, and another had been identified as a UK national.

Mr Wilkinson tabled a written statement. The Chairman allowed Members five minutes in which to read the document. The Chairman then invited Ms Powell to question Mr Miah.

In response to a question from the Ms Powell, Mr Miah said he had been out of the country at the time of the Immigration Officer's visit but he had verbally delegated authority to an employee. He confirmed that this employee was not a premises licence holder and did not have the necessary training, although he did have much experience in the restaurant industry.

Ms Powell said Mr Miah had put forward the argument that as he had not been prosecuted for illegally employing people, he therefore had done nothing wrong. She said this was untrue and explained the legal distinction between illegal employment and illegal working, and the different standards of proof required to bring forward a successful prosecution. When asked, Mr Miah said he did not retain employment contracts as he mostly employed friends and family. He said it was his delegate who had broken the law, rather than himself, and the Police would have prosecuted him [Mr Miah] if there had been enough evidence to do so. Ms Powell explained that the burden of proof required to prosecute an employer was much greater than that needed to prosecute an illegal worker. She said as Mr Miah did not produce employment contracts, it would be very difficult to prove he was not employing people illegally.

Mr Miah asked a series of questions relating to the appearance and identity of individuals described in the Police report. Mr Wilkinson said this was the first opportunity Mr Miah had to question the report in the presence of Officers. Mr Clarke said he had been present at the time of the visit and highlighted a particular officer statement to identify the individuals Mr Miah was referring to.

In response to a question from Councillor Gerard, Mr Miah said he had been running his own business for sixteen years and had been licensed for the duration of that time. He added that he had been on holiday three or four times during that period.

Councillor Gerard said Mr Miah was an experienced business owner and knew the importance of delegating authority. He asked Mr Miah why he had omitted all mention of the delegation of authority in his statement.

Mr Wilkinson said the document was not a statement.

Mr Miah said he had verbally delegated authority to people when he had been on holiday in the past and there had never been a problem before. He added that he should have included the delegation of authority in his statement.

In response to a further question from Councillor Gerard, Mr Miah confirmed that the document distributed to the panel was his statement.

Councillor Barker said it was not a statement as Mr Miah had not signed it; he asked if Mr Miah had written the document.

Mr Wilkinson said his client had not written the document and it was not a legal statement but rather a summary of Mr Miah's situation.

Councillor Barker asked for the name of the individual to whom authority had been delegated and what qualifications he had.

Mr Miah named his delegate and he was experienced but did not hold a licence, nor did he have relevant qualifications.

The Licensing Team Leader asked Ms Powell if Mr Miah had been served the non-redacted version of the police report.

Ms Powell, and Mr Miah, confirmed that this was the case.

The Chairman asked Ms Powell, on behalf of Essex Police, to submit a closing statement.

Ms Powell said Right to Work checks had been in force since 1996 and Mr Miah was required to keep up to date with current legislation as a responsible business owner. She said that due diligence had not been carried out and Mr Miah had not supplied the police with employment contracts, proof of right to work checks and proof that he had delegated authority to an employee. She said the employment of illegal workers was akin to modern slavery as workers had no rights, no contracts and no definitive wages. She added that this had wider ramifications on the community at large as it gave the business an unfair commercial advantage in terms of a lower wage bill, as well as undercutting the wages of local workers.

Ms Powell said Mr Miah, as a Premises Licence Holder, had breached Licensing Objective One, the prevention of crime and disorder, as illegal workers had been found working on his premises. For this reason she recommended that Mr Miah's licence was revoked.

At the request of the Chairman, Mr Wilkinson submitted a closing statement on behalf of Mr Miah.

Mr Wilkinson apologised to the Committee for the confusion surrounding the document he had distributed to the panel. He said Mr Miah was of good character and had never come into contact with the authorities before. He said Mr Miah had discharged his duties properly by delegating authority to an employee, and that Mr Miah knew nothing of the illegal workers whilst he was away on holiday.

At 11.50, the Committee withdrew to make its determination.

At 12.55, the Committee returned and read the decision notice to Mr Miah.

## DECISION NOTICE

The application before the Panel today is for the review of the premises licence of the Razza Restaurant, Temple Buildings, Braintree Road, Felsted, dated 28<sup>th</sup> December 2012 and held by Saysta Miah. Mr Miah is also the DPS. The application is being made by Essex Police and they are supported by the Immigration Authorities. An email confirming this is included within the papers before us.

The grounds for the application are that the Police consider Licensing Objective One, the prevention of crime and disorder, is being breached and specifically, that no right to work checks are being carried out under the Immigration, Asylum and Nationality Act 2016, two persons having been found on the premises carrying out work when not permitted to do so under the immigration legislation. This is a serious offence and on indictment carries with it liability to 2 years imprisonment and/or an unlimited fine.

We have had sight of a detailed report and have considered the extensive background papers, including:-

- (a) Premises Licence
- (b) Plan of Premises
- (c) Application for the review of a premises licence under the Licensing Act 2003
- (d) Licensing Act 2003
- (e) Revised Guidance issued by the Home Office dated April 2017 under section 182 of the Licensing Act 2003
- (f) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22.
- (g) A document prepared by solicitors and submitted on behalf of Mr Miah.

In particular we have been mindful of paragraph 2.6 of the Home Office Guidance, which specifically includes illegal working within licenced premises as a matter Licensing Authorities are to take account of. Paras 4.22, 8.99, 11.18 and 11.26 expand further upon this, and para 11.27 states that “there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises for.....employing a person who is disqualified from that work by reason of their immigration in the UK.”

Paragraph 11.28 says ‘It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.’

We have also been referred to case law which specifically provides that a) deterrence of others is a consideration that this Committee may have in mind (*The Queen on the Application of Bassetlaw District Council v Worksop*

*Magistrates Court [2008] EWHC 3530 Admin*) in making its decision and b) there does not have to be a conviction for an offence under the 2006 Act for a licence to be revoked under the crime prevention objective ( *East Lindsey District Council v Hanif t/a Zara's Restaurant and takeaway [2016]EWHC 1265 Admin*)

The Council's existing licensing policy does not specifically make reference to immigration issues but it has been recently revised and the amended version contains the following provisions:

3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.

- The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.**

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour
- Illegal working

#### Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

- a) Effective and responsible management of premises
- b) Training and supervision of staff
- c) Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA (British Beer and Pubs Association), Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- d) Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with

- photographs or adoption of industry best practice (e.g. Challenge 25 policy)
- e) Provision of effective CCTV and mirrors in and around premises
  - f) Employment of Security Industry Authority licensed door staff
  - g) Provision of toughened or plastic drinking vessels
  - h) Provision of secure, deposit boxes for confiscated items ('sin bins')
  - i) Provision of litterbins and other security measures, such as lighting, outside premises
  - j) Membership of local 'Pubwatch' schemes or similar organisations
- (k) Right to work checks on staff and retention of documents**

The Committee's powers on a review are as follows:-

- Allow the licence to continue unmodified
- Modify the conditions of the licence
- Modify the conditions of the licence for a period not exceeding 3 months.
- Exclude a licensable activity from the scope of the licence
- Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months.
- Revoke a licence
- Remove the Designated Premises Supervisor.

Should the Committee be minded to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. This is made clear in paragraphs 10.8 and 10.10 of the Home Office Guidance. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation, in this case S21 of the Immigration, Asylum and Nationality Act 2006.

We have heard from Ms Powell on behalf of the Police and Mr Clarke on behalf of the Immigration Authorities. Mr Miah has spoken on his own behalf and we have heard from his solicitor, Mr Wilkinson, as well.

However, there are a number of issues we cannot overlook. Firstly, Mr Miah did not keep proper records. His failure to keep those records meant that the Immigration Service could not evidence the contracts of employment necessary to issue a civil penalty or bring criminal charges. Secondly, he failed to delegate his responsibilities as a licensee to a properly qualified person while he was out of the country: a licensee's responsibilities do not cease just because they leave the premises.

Nor did he accept his responsibility to keep himself abreast of the law, or of other regulatory requirements applicable to his business.

Finally, we have considered the nature of the licensing objective at issue, namely the prevention of crime and disorder. The important word for our purposes is "prevention", and by his failures Mr Miah did not put into place measures to prevent illegal working. We have considered most carefully the decision of Jay J in the case of *East Lindsey District Council v Hanif t/a Zara's Restaurant and*

Takeaway [2016] EWHC 1265 when he stated that the statute was engaged even when there had been no conviction.

This Committee's primary function is the protection of the public. Though we are not a Court and the standard of proof before us is the civil one of the balance of probabilities, we are satisfied that the two people referred to in the Police submissions and Home Office email were working illegally in the United Kingdom.

We therefore consider that the premises licence should be revoked under S52 (4) (e) of the Licensing Act 2003 and that revocation is an appropriate step with a view to promoting the crime prevention licensing objective.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the license remains in force. Mr Miah will receive a letter from the Legal Department explaining this.

LIC36

### **ITEM 3 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 – RADHUNI**

*Councillor Gerard declared a personal interest as a customer of Radhuni restaurant and took no further part in the meeting. He left the room at 1.10pm.*

The Chairman explained procedure and introduced the panel to Mr Ahmed. The Licensing Team Leader presented her report to the panel, explaining why the premises licence was under review, and what decisions the Committee could make in respect of the review; Mr Ahmed confirmed he had been sent a copy of the report.

At the invitation of the Chairman, Ms Powell presented her report to the Committee, outlining the Police's case for revocation of Mr Ahmed premises licence on the grounds that the 'Prevention of Crime and Disorder Objective' of the Licensing Act 2003 had been undermined. No questions were asked at this point.

Mr Ahmed presented his own account at the request of the Chairman. He said the letter he had sent to the Licensing Team Leader was in effect his statement. He said that he was on holiday at the time of the Immigration Officer's visit and that he only knew one of the three men arrested. He added that the man he knew had been staying with him but he had not given permission for any of the three men to work at his restaurant.

Ms Powell said one of the men arrested claimed he had been working at the restaurant for three months; Mr Ahmed said he had not employed the man but he was staying as a guest in his house. She asked if Mr Ahmed kept employment records; Mr Ahmed said he did not need to as he mainly employed family and friends. He added that he did carry out Right to Work checks if he employed somebody he did not know.

In response to a question from the Chairman, Mr Ahmed said he had not checked the immigration status of his friend who had been arrested for working illegally in his restaurant.

The Chairman asked Mr Ahmed if he did not feel liable for the illegality that had occurred at his restaurant, as referred to in his statement. Mr Ahmed said he did feel responsible and he was only quoting the letter he had received from the police. Mr Clarke said the letter he was referring to was essentially a 'no further action' letter which was commonly sent out when a prosecution was not to be taken forward.

At the invitation of the Chairman, Ms Powell submitted a closing statement on behalf of Essex Police. She told the panel that it was common for no prosecution to be brought forward for illegal employment, due to the heavy burden of proof required, but reminded Members that illegal workers had been found on the premises. She said Mr Ahmed had previously failed to carry out Right to Work checks and had been issued a civil penalty in 2011 for this offence. He had also failed to carry out due diligence and provided no employment contracts or proof of right to work checks. For these reasons she recommended that his licence should be revoked as Licensing Objective One, the prevention of crime and disorder, had been breached. She added that revoking a premises licence was a legitimate deterrent and highlighted the case of Bassetlaw as legal precedent.

At the invitation of the Chairman, Mr Ahmed submitted his closing statement. He asked Members to consider the impact of revoking his licence and said he would lose his business if he could no longer sell alcohol. He apologised for his staff being rude on the day Immigration Officers visited the premises. He thanked the panel and said he would accept their decision.

At 1.50pm, the Committee withdrew to make its determination.

At 2.15pm, the Committee returned and read the decision to Mr Ahmed.

## **DECISION**

The application before the Panel today is for the review of the premises licence of the Radhuni Restaurant, High Street, Newport, dated 18<sup>th</sup> November 2015 and held by Shamim Ahmed. Mr Ahmed is also the DPS. The application is being made by Essex Police and they are supported by the Immigration Authorities.

The grounds for the application are that the Police consider Licensing Objective One, the prevention of crime and disorder, is being breached and specifically, that no right to work checks are being carried out under the Immigration, Asylum and Nationality Act 2016, three persons having been found on the premises carrying out work while not being entitled to do so under the immigration legislation. This is a serious offence and on indictment carries with it liability to 2 years imprisonment and/or an unlimited fine.

We have had sight of a detailed report and have considered the extensive background papers, including:-



- a. Premises Licence
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- d. Licensing Act 2003
- e. Revised Guidance issued by the Home Office dated April 2017 under section 182 of the Licensing Act 2003
- f. Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22.
- g. Supplemental Statement from Immigration Officer Clouting
- h. Letter from Mr Ahmed with enclosures.

In particular we have been mindful of paragraph 2.6 of the Home Office Guidance, which specifically includes illegal working within licenced premises as a matter Licensing Authorities are to take account of. Paras 4.22, 8.99, 11.18 and 11.26 expand further upon this, and para 11.27 states that “there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises for.....employing a person who is disqualified from that work by reason of their immigration in the UK.”

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We have also been referred to case law which specifically provides that a) deterrence of others is a consideration that this Committee may have in mind (*The Queen on the Application of Bassetlaw District Council v Worksop Magistrates Court [2008] EWHC 3530 Admin*) in making its decision and b) there does not have to be a conviction for an offence under the 2006 Act for a licence to be revoked under the crime prevention objective (*East Lindsey District Council v Hanif t/a Zara’s Restaurant and takeaway [2016]EWHC 1265 Admin*)

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- d. Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)
- e. Provision of effective CCTV and mirrors in and around premises
- f. Employment of Security Industry Authority licensed door staff
- g. Provision of toughened or plastic drinking vessels
- h. Provision of secure, deposit boxes for confiscated items ('sin bins')
- i. Provision of litterbins and other security measures, such as lighting, outside premises
- j. Membership of local 'Pubwatch' schemes or similar organisations
- k. **Right to work checks on staff and retention of documents**

The Committee's powers on a review are as follows:-

- Allow the licence to continue unmodified
- Modify the conditions of the licence
- Modify the conditions of the licence for a period not exceeding 3 months.
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- Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months.
- Revoke a licence
- Remove the Designated Premises Supervisor.

Should the Committee be minded to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. This is made clear in paragraphs 10.8 and 10.10 of the Home Office Guidance. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation, in this case S21 of the Immigration, Asylum and Nationality Act 2006.

We have heard from Ms Powell on behalf of the Police and Mr Clarke from the Immigration Authority. We have also read a letter from Mr Ahmed and he has addressed us in person. However, he has not produced any proper personnel or other records and we note that it was a failure to produce these records evidencing employee status that meant he could not be prosecuted or subjected to a Civil Penalty by the Immigration Authorities.

The evidence we have seen shows that the three individuals concerned admitted working without the proper immigration checks having been undertaken, and furthermore, that one of them also admitted to working for his keep only in breach of other employee rights legislation. Though Mr Ahmed has stated in his letter that the licensee of other premises was overseeing Radhuni during his absence abroad, he has produced nothing whatsoever to substantiate this and we cannot accept a bare statement as being sufficient proof of compliance with his continuing obligations as licensee. Finally, we cannot overlook the fact that this is not a first offence: Mr Ahmed was made subject to an Illegal Working Civil Penalty in April 2011.

The grounds upon which the Police have made this application are that Licensing Objective One, the prevention of crime and disorder, has been breached. The important word is "prevention" and Mr Ahmed has failed to prevent, not for the first time, illegal working. We have considered the decisions of R on the application of Bassetlaw District Council v Worksop Magistrates Court [2008] EWHC 3530 and East Lindsey District Council v Hanif t/a Zarsa Restaurant [2016] EWHC 1265 and are satisfied that even though on this occasion Mr Ahmed has not on this occasion been subject to any penalty, the licensing objective is nevertheless engaged.

This Committee's primary function is the protection of the public. Though we are not a Court and the standard of proof before us is the civil one of the balance of probabilities, we are satisfied that Mr Ahmed engaged the three people referred to in the Police submissions to work unlawfully in this country.

We therefore consider that the premises licence should be revoked under S52 (4) (e) of the Licensing Act 2003 and that revocation is an appropriate step with a view to promoting the crime prevention licensing objective.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the licenses remain in force. Mr Ahmed will receive a letter from the Legal Department explaining this.

The meeting ended at 2.30pm.