

LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held in the COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, ESSEX CB11 4ER, on MONDAY, 12 FEBRUARY 2018 at 10.00 am

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and E Hicks

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

Also Present: Mr Ashford (Essex Police), Ms Powell (Licensing Officer – Essex Police) and Mr Sparrow (Essex Police)

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APPLICATION FOR A PREMISES LICENCE

The applicant, Mr Nazmul Islam Tapadar, had not arrived by 10am.

The Licensing Team Leader left the room to call Mr Tapadar to ascertain his arrival time.

On her return to the room, she said Mr Tapadar had not answered her call.

The Chairman began proceedings at 10.10am.

The Chairman explained procedure and introduced the panel to the police officers present.

The meeting was adjourned at 10.17am to allow the Enforcement Officer to leave the meeting to check if Mr Tapadar had arrived. On his return, he said Mr Tapadar had not arrived.

The meeting was re-convened at 10.20am.

The Licensing Team Leader presented her report to the panel and gave a summary of the new application for a Premises Licence to be granted to Radhuni restaurant, Newport.

A previous premises licence had been held by Radhuni restaurant under a different holder but had been revoked by the Licensing & Environmental Health Committee on 6 December 2017. This was on the basis that ‘the prevention of crime and disorder’ licensing objective, as defined in the Licensing Act 2003, had been breached due to illegal workers being found on site by Immigration Officers in September 2017.

A new application for Radhuni restaurant had now been made in the name of Mr Nazmul Islam Tapadar. The Licensing Authority served copies of this application to all of the statutory bodies. Representations were made by the Home Office (Immigration Enforcement) and Essex Police based on the crime and disorder

objective. For this reason the application had been referred to the Committee for determination.

At 10.27am, the Chairman adjourned the meeting and requested that the Licensing Team Leader call Mr Tapadar again. On her return, she said there had been no answer, although she had left a message for him.

The Chairman re-convened the meeting at 10.33am.

The Solicitor said the application before Members had to be judged on its own merits in accordance with the Council's licensing policy and the Licensing Act 2003. She said ample opportunity had been given to the applicant to attend the meeting and was satisfied he had received notice.

The Chairman invited Ms Powell to present her report to the panel.

Ms Powell said she had concerns regarding the application, particularly because it was received so soon after the revocation of the previous licence, and evidence suggested this was an attempt to re-licence Radhuni restaurant 'through the back door'.

She said the new application presented itself as a separate business entity, although in reality Mr Tapadar was the 'silent' business partner of the previous applicant, Mr Ahmed. Internet searches had found that Mr Tapadar and Mr Ahmed were dissolved officers of the same company (Radhuni UK Ltd inc 13/07/2005), and that Mr Tapadar was Director of Curryworld London Ltd, a company that was registered to the same address as Radhuni restaurant, as of 19/09/17.

Ms Powell said this showed the new application was not for a separate business, and in reality no change of management had occurred at Radhuni restaurant. This was further demonstrated when police visited the premises on 18 January 2018. Mr Tapadar was not present and the officers were told by a man, who said he was Mr Ahmed's cousin, that Mr Ahmed was still in control of the restaurant. She said there was even a food safety award on display which stated the names of both men proving that they were in business together.

Ms Powell said the licensing system had been undermined as alcohol was still visible and wine lists remained on tables. Furthermore, no 'right to work checks' had been established as routine practice at the restaurant. She said this indicated that management of Radhuni restaurant had not taken the revocation of the premises licence or the arrests of illegal workers on site, seriously.

She concluded by saying this was not a new application, but a deceitful attempt to re-licence the restaurant under a different licence holder's name. The restaurant had not undergone a change in management, or even working practices, following the revocation of its licence and she asked Members to refuse the new application on the grounds that the restaurant had breached and was continuing to undermine Licensing Objective One, the prevention of crime and disorder.

In response to a question from the Chairman, Ms Powell said intelligence was shared between Immigration and Licensing Enforcement officers and if necessary the Radhuni restaurant would be subject to an immigration check again.

In response to a Member question, Mr Ashford said personal licences could not be revoked as it was the company in question, not the individual, that was under investigation. He said it would require an individual conviction for a personal licence was to be revoked.

The Chairman said he would be writing to the Licensing Authorities which had issued the personal licences to inform them of this situation.

At 10.55am the Chairman adjourned the meeting to allow the Enforcement Officer to check whether Mr Tapadar had responded to the previous messages.

He had not responded.

The meeting was re-convened at 11.00.

The Solicitor said all possible attempts had been made to contact Mr Tapadar and a decision would have to be made by the panel.

At 11.02am, the Committee withdrew to make its determination.

At 11.36am, the Committee returned and the Chairman read the decision.

DECISION

The application before the Panel today is for the grant of a new premises licence of the Radhuni Restaurant, High Street, Newport. The application is dated 20th December 2017 and is made by Nazmul Islam Tapadar.

Representations have been made by both Essex Police and by the Immigration Authorities and accordingly the matter has been referred to us for determination.

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

Premises licence application (Appendix A)

Plan of premises (Appendix B)

Representation from Statutory consultee (Home Office) (Appendix C)

Representation from Statutory consultee (Essex Police) (Appendix D)

Location map of premises (Appendix E)

Revised Guidance issued under section 182 of the Licensing Act 2003

Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

As prescribed by the Licensing Act 2003, where an applicant submits documentation supporting a premises licence application, then an operating

schedule must be submitted. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought.

These are set out in part M of the application form (Appendix A of the bundle before us).

The licensable activities being sought on the application are listed below:

- | | | |
|-----|---|----------------|
| (F) | Recorded music | (indoors only) |
| | Sunday to Thursday | 11am to 10pm |
| | Friday & Saturday | 11am to 11pm |
| (J) | Supply of Alcohol for consumption on the premises (on the premises) | |
| | Sunday to Thursday | 11am to 10pm |
| | Friday & Saturday | 11am to 11pm |
| (L) | The opening hours of the premises | |
| | Sunday to Thursday | 11am to 10pm |
| | Friday & Saturday | 11am to 11pm |

Copies of the application have been served on all of the statutory bodies, and has attracted representations from Home Office (Immigration Enforcement) and from Essex Police, both based on the Crime and Disorder objective. Details of these representations can be seen at Appendix C and Appendix D respectively and we have also heard from Miss Powell, Mr Sparrow and Mr Ashford from Essex Police. Mr Tapadar did not attend and numerous attempts were made to contact him in the course of the hearing.

In carrying out the statutory function, the Licensing Authority must promote the the licensing objectives as set out in the 2003 Act, namely:-

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

The decisions that are available to this Committee are to

- Grant the application
- Modify the application by inserting conditions
- Reject the whole or part of the application

When determining an application due regard should be given to the Council's licensing policy and the Secretary of State's Guidance issued in accordance of the Act. The Secretary of State's guidance issued in April 2017 year includes new guidance in respect of immigration issues.

Paragraph 2.6 says The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

Paragraph 11.26 relates to reviews, but can be taken into consideration in determining new applications - 'Where the licensing authority is conducting a

review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder. '

Paragraph 11.27 says '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 the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. '

The relevant sections of the Council's Licensing Policy are:

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

Should the Committee be minded to impose conditions on the grant of a licence, 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.

Specifically, that guidance provides as follows:-

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing

objective conditions may be included that are aimed at preventing illegal working in licensed premises.

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided... Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

We have heard from Miss Powell, who presented the Police case and from Messrs Sparrow and Ashford, who answered questions from us. The Police were concerned that an application for a fresh licence had been made so soon after the revocation of the previous licence, in fact, within the time period during which an appeal could have been filed. They were satisfied on the basis of evidence obtained from Companies House that the Applicant and Mr Ahmed, the previous licensee, have carried on business from the High Street, Newport, premises both in partnership and as directors of various companies, since at least 2005.

Visits to the premises revealed that no personnel files incorporating right to work checks were being maintained, that Mr Ahmed, the previous licensee, remains the manager of the premises, that alcohol remained visible upon the premises and wine lists remained in place on the tables, and that food hygiene certificates in the names of Messrs Ahmed and Tapadar remained on display.

Miss Powell submitted that this is not a new application, but a deceitful attempt to revive the old business without going through the appellate process; that the business is the same business and that no changes have been made: and that the grant of a new licence would be a substantial undermining of the prevention of crime and disorder objective.

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 Police have made out their case and that this application does not relate to a wholly new business; instead, the Applicant and Mr Ahmed have traded in partnership since at least 2005. We are aware that the Home Office guidance permits this Committee to use its powers to deter others, and this is a case where we should do so. This application is a flagrant abuse of the law, and like the Police, we take this matter very seriously.

Accordingly this application is refused.

There is a right of appeal against this decision which must be exercised within a period of 21 days. Mr Tapadar will receive a letter from the Legal Department explaining this.