

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on TUESDAY, 21 AUGUST 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)
Councillors A Gerard, E Hicks and J Loughlin

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

Also present: G Ashford and V Powell (Essex Police), H Chowdhury
(Applicant), Z Chowdhury (Licensee), M Harmon (Solicitor for
the Applicant and the Licensee).

**LIC40 APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE - QUEEN
VICTORIA GREAT DUNMOW**

The Chairman introduced the Panel and explained procedure to those present.

The Licensing Team Leader gave a summary of the report.

Mr Hadayouth Choudhury and Mr MD Anayet Chowdhury had applied to transfer premises licence Queen Victoria, 79 Stortford Road, Great Dunmow into their names from the current licence holders Mr Ziaul Chowdhury and Mr Omar Shorif. On 24 July 2018, the Licensing Authority received a notice under Section 42 (6) of the Act from Essex Police in objection to this application, including a detailed account of their reasons.

G Ashford and V Powell summarised the case made by Essex Police. A review of the Queen Victoria's licence was due to take place on 11 September 2018, due to the results of the immigration raid which took place on 6 July 2018. This raid found three people with no right to work in the UK working at the premises, two of whom had no right to remain in the UK. This was the fourth time since 2013 that illegal immigrants had been found to be working at the Queen Victoria.

Three days after this raid had taken place, the premises licence holders submitted an application to transfer the licence to Hadayouth Chowdhury and Anayet Chowdhury. It was contended that the application for the immediate transfer of a premises licence was an attempt to protect the business at the hearing for the review

Z Chowdhury said errors of judgement on his part had led to him employing illegal immigrants in the past, without completing proper checks on their identification. He was now employing CSS consultants to take him through a course to assess how to properly identify people with the right to remain and work in the UK. When the immigration raid took place on 6 July, the three people working illegally at the Queen Victoria had only been working there since earlier that evening. Z Chowdhury had only been at the premises for 11 minutes and so had only just begun vetting his new worker's IDs.

M Harmon said the application for a transfer of a licence was submitted, the family were not aware it would have implications for the review. The transfer had always been planned to take place and H Chowdhury had been working part time in the Queen Victoria to prepare for taking over the licence. The Queen Victoria was part of a family business and it was acceptable to keep it in the family.

H Chowdhury confirmed he was also studying the CSS course in order to prepare himself for taking over the licence of the Queen Victoria. There was a website available to employers which allowed them to input the potential employee's name and national insurance number to confirm if they had the right to work in the UK. He said that if in doubt about the right to work of potential employees, he would consult his father and his uncles. He felt he knew enough to be able to carry out the duty of care he would have as a licence holder.

At 11.15, the Committee retired.

At 12.45, the Committee returned.

The Chairman read the decision to those present.

The meeting ended at 1.00.

DECISION NOTICE – QUEEN VICTORIA PUBLIC HOUSE/INDIAN RESTAURANT

The application before the Panel today is for the transfer of the premises licence to the Queen Victoria, 79 Stortford Road, Great Dunmow, to Messrs H Choudhury and MDA Chowdhury, to which application Essex Police object. The matter has therefore come before us today pursuant to the provisions of S42 Licensing Act 2003. We have taken into account the provisions of the Act, the most recent Home Office Guidance, issued this year, and the Council's Statement of Licensing Policy.

Mr H Choudhury and Mr MDA Chowdhury have applied to transfer the premises licence of the Queen Victoria, 79 Stortford Road, Great Dunmow into their names from the current licence holders Mr Z Chowdhury and Mr Omar Shorif. This Premises Licence PLO113 was originally granted to Mr Z Chowdhury and Mr Omar Shorif on 9 November 2005. An application to transfer the licence under S42 LA 2003 was received by Uttlesford District Council ("the Licensing Authority") to Mr H Choudhury and Mr MDA Chowdhury on 9 July 2018 although

due to errors needing to be corrected on the form it was not officially valid until 12 July 2018. A copy of this document is before us.

An application for the transfer of an existing premises licence under Section 42 of the Act is normally a straightforward licensing procedure and is dealt with as an administrative matter. As part of the application process, notice of the application needs to be served on to the Police and also the Home Office if alcohol and or late-night refreshment is involved. Under Section 42 (6) where a Chief Officer of Police is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, (see post) he must serve notice upon the Licensing Authority within fourteen days of receiving the application. Under normal circumstances, a request to transfer has immediate effect and is administered by the Licensing Authority accordingly, since by virtue of Section 43 of the Act the premises licence has effect during the “application period” as if the applicant were the holder of the licence.

The application period begins when the application was received by the Licensing Authority and ends when the application is granted, or if it is rejected, at the time the rejection is notified to the applicant. Therefore, if a decision is made to appeal the Panel’s decision today to the Magistrates Court the “application period” will continue until the determination by that court.

However, when a valid objection under Section 42 (6) is received from the Police and the objection has not been withdrawn, S44(5) LA 2003 requires that the matter must be referred to the Licensing and Environmental Health Committee for a hearing to determine the application. That hearing must take place within 14 days. Notice under S42(6) was received from Essex Police on 24th July 2018 accompanied by a very detailed statement of reasons, to be found at Appendix 2 of the bundle of documents before us. A copy of this has been served upon the Applicants.

The Applicants, the Police and the previous licence holder have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 and Licensing Act 2003 (Hearings) (Amendment) Regulations 2005, together referred to as the Regulations. Information to accompany the notice of

hearing was provided to the Applicants, the Police and the previous licence holder in accordance with the Regulations.

Though the LA 2003 sets out four licensing objectives, namely:-

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

A Police objection to the transfer of a licence may only be made under Objective 1, the prevention of crime and disorder. The options before us today are also set out by law, and are:-

- To grant the transfer of this premises licence to Mr H Choudhury and Mr MDA Chowdhury or
- To reject the application for the transfer of the premises licence to Mr H Choudhury and Mr MDA Chowdhury if it considers it appropriate to do so for the promotion of the crime prevention objective

We are mindful that the premises are already the subject of a review application made by Essex Police on the crime and disorder ground, specifically immigration offences and we are aware of the provisions of paragraph 8.101 of the Home Office Guidance, which states that objections to transfers in such circumstances are likely to be rare, but will be based on evidence. For the sake of completeness, we add that the Act gives a right of appeal, by any aggrieved person, including the Police, to the Magistrates Court against any such review decision within 21 days.

We have read the papers before us and we have heard from Mr Ashford and Mrs Powell on behalf of Essex Police and from Mr Z Choudhury, the previous licensee, Mr H Choudhury, one of the Applicants, and from Mr Harman, their solicitor. We understand that when an application for the transfer of a licence is made with a request that the transfer have immediate effect, then the licence has effect during the application period as if the applicant were the licensee. Mr H Choudhury has thus been the licensee of the Queen Victoria since 9th July 2018.

We have listened to what he had to say and he was specifically asked to explain what he would do if a job applicant presented themselves at the premises. He said that he would ring the consultancy, CSS, first: that he knew that there were websites that he could consult and that there were people he could ask for advice – his father and his uncles. He admitted he would have to look into these matters, that he had only been working part-time in the business and that he had had no management responsibility. He did not appear to have at least a theoretical knowledge of his obligations at his fingertips and he appeared to be proposing to rely too heavily upon family members. Because of this, even though we believe it was planned that at some point he would take over management of this business, we do not believe he is ready just yet. He has a lot of homework to do.

Furthermore, he will remain an employee of a small family business. S16 of the Act provides that the applicant for a premises licence – or an intending transferee – should be a person who carries on, or proposes to carry on, a business involving the premises the subject of the application. There must be an intention to carry on a business. Mr H Choudhury will not be carrying on a business, he will remain employed in a business operated by family members, and on his own admission he has said that he would rely upon his father and his uncle, both of whom have used illegal labour in the operation of that business. We are also aware that the legislature has specifically chosen to include immigration offences among the matters the Police are entitled to bring before this Committee.

We have thought long and hard, and have debated our actual decision most anxiously. Ultimately, though, the fact remains that this business is owned and operated by a limited company and there are no immediate plans for Mr H Choudhury to obtain a substantial interest in that business. He has not used his seven weeks as de facto licensee to even acquire the necessary knowledge to answer our questions with any degree of fluency today. The responsibilities of a licensee are personal and we do not feel that Mr H Choudhury is yet ready to

assume those responsibilities, given the persons to whom he admits he will turn for help.

We therefore refuse this application for a transfer. This means the licence will revert to the original holder which in the circumstances of this particular case we feel is the most appropriate result.

Both the Applicants and the Police have a right of appeal against this decision which must be exercised within a period of 21 days. They will receive a letter from the Legal Department, with a copy of this decision notice, explaining this.