

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at ZOOM -
HTTPS://ZOOM.US/, on TUESDAY, 12 MAY 2020 at 1.00 pm**

Present: Councillor P Lavelle (Chair)
Councillors C Day and P Lees

Officers in attendance: A Bochel (Democratic Services Officer), B Ferguson (Democratic Services Manager), C Gibson (Democratic Services Officer), S Mahoney (Senior Licensing and Compliance Officer) and E Smith (Solicitor)

Also present: Cllr V Isham, F Choudury (Applicant), D Dadds (Solicitor for the Applicant), W Moody (Essex Police)

LIC59 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Councillor Day declared a personal non-pecuniary interest in that he was in receipt of a Metropolitan Police pension.

LIC60 QUEEN VICTORIA PREMISES LICENCE MAJOR VARIATION

The Senior Licensing Officer gave a summary of the report which set out an application for the grant of a major variation of the licence for the Queen Victoria also known as the Jalsa Ghar Restaurant. The application had been made by Fazlul Bari Choudhury, the premises licence holder.

Condition 5, Annex 3 of the premises licence stated 'Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business and from the premises themselves'.

The variation being sought on the application was to amend this to read: Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business, Mr Omar Shorif will be excluded from the premises

Representations had been made by Essex Police in response to this application so therefore the matter had been referred to the Committee for adjudication.

The solicitor for the applicant said Mr Ziaul Islam Choudhury was a family member of the licence holder and due to the issues of staffing caused by the coronavirus pandemic, was needed to help out at the premises during evenings and weekends. In order for the application to be successful it was important to satisfy the licencing objectives. There was not sufficient evidence that these had been undermined since the licence was granted in June 2019, and no evidence that it would be undermined if the condition was to be amended. Mr Ziaul Islam Choudhury would not be part of the management structure of the business. The applicant would accept the new condition being time limited.

In response to a member question, the solicitor for the applicant noted that the CCTV cameras at the Queen Victoria had been upgraded shortly after the police had last visited the premises. Mr Ziaul Islam Choudury would have had no access to the CCTV at the premises.

The representative of Essex Police said the company had been one of the worst offenders for employing illegal immigrants in Essex. The applicant was the director of this company. The Police had received intelligence that Mr Ziaul Islam Choudury had attended the Queen Victoria premises on multiple occasions despite the condition that he not do so. Intelligence also suggested that Mr Ziaul Islam Choudury had been heard to laugh about preventing the Police from accessing CCTV footage.

In response to a member question, the representative from the Police said he did not know what kind of intelligence had been received. Further to this intelligence being passed to the Police, this was reported to Uttlesford District Council.

At 3.05, the Panel retired to make its decision, and invoked the right to reserve judgement for up to 5 days.

The meeting ended at 16.00.

DECISION NOTICE – QUEEN VICTORIA/JALSA GHAR, 79 STORTFORD ROAD, DUNMOW.

(Via Zoom)

The application before the Panel today is for a major variation to the premises licence for the above address. The application is dated 20th March 2020 and is for the removal of a condition barring a previous licensee, Ziaul Choudhury from the premises, imposed by this Committee in June 2019. An application is not made in respect of his exclusion from management of the premises made upon the same date and we stress from the outset that that condition remains in place.

Due to the current COVID 19 pandemic this application is being made remotely. Participants have attended via Zoom or have dialled in and I thank them all for their assistance in making this hearing possible. For the same reason we are reserving our decision under Regulation 26(2) of the 2005 Licensing Act (2003) Hearings Regulations and the parties will receive this decision notice by email before close of play on Friday, ie 15th May 2020.

Objections to the application have been made by Essex Police under the crime and disorder objective, based upon a lengthy history of immigration crime. The objections are based upon the fact that Mr Z Choudhury has been involved with a number of premises over the years and in every case illegal workers have been found upon those premises. Indeed his licence for these particular premises was revoked upon that basis and though an application has not been made to set aside the condition prohibiting him from management participation it

is clear the Police anticipate he will once more become de facto manager. 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:-

Application form.
Premises plan
Police representations
Location map of premises
Guidance under S182 Licensing Act 2003
Uttlesford District Council's Licensing Policy 2017-22.

The detailed histories of these premises and of Mr Choudhury's career as a licensee are set out in the Police documentation a copy of which is before us. We have read this carefully and it makes discouraging reading; the Police have kindly prepared a detailed history of the ownership and management of these premises, a copy of which has been served on the applicants, and the current licence was only granted last summer on the clear understanding that Mr Choudhury's connection with the premises was permanently severed. We may only take into account matters that have occurred since the date of grant of that licence but we do pause to note that one of the applicants before us today, Mr F Choudhury, has save for a very brief period in late 2018 been involved with Aldbrook Ltd, the company operating these premises as a director, shareholder or both for a very long time and therefore under company law has had, particularly while holding the role of director, some responsibility for the legality of the company's operations.

In accordance with the Licensing Act 2003, where an application is made for a variation to the premises licence, a description of the proposed variation must accompany the application. This can be read on page 2 part 3 "Variation" appended to the application form (appendix A).

The variation being sought on the application is to amend the condition below: Condition 5 annex 3 of the premises licence states:

Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business and from the premises themselves

to –

Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business, Mr Omar Shorif will be excluded from the premises

Copies of this application have been served on all of the statutory bodies and this has attracted a representation from Essex Police based on the crime and disorder objective. Details of this representation along with exhibits can be seen in Appendix C, and these include copies of the various decisions of this Committee relating to these premises. We note that the options available to us today are to grant the application as asked, to modify it by inserting alternative conditions, or to reject the application.

In carrying out its statutory functions, the Licensing Authority must promote the licensing objectives as defined in the Licensing Act 2003:-

The prevention of crime and disorder
Public safety

The prevention of public nuisance
The protection of children from harm

There is no hierarchy of objectives and all have equal weight/importance.

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 most recent version is dated April 2018 and we are mindful of the contents

thereof. It includes new guidance in respect of immigration issues; it is immigration

crime only that concerns the Police and no other matters have ever been brought to

our attention in respect of these premises. We note the provisions of paragraphs 2.6,

11.26 and 11.27 as set out in the officer's report and record that no complaints or action in respect of such matters have taken place during the currency of the present licence.

The application before us today is for a variation in the terms of a condition, and the Secretary of State's Guidance provides us with the following assistance at paragraphs 10.8 and 10.10:-

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 observe that the condition that the applicants now wish us to discharge was voluntarily offered by them in June 2019. We also note that if this Committee wishes to impose alternative conditions, the only conditions that can be imposed are those that are appropriate and proportionate to promote the licensing objective relevant to the representations received. Equally, we cannot impose conditions that duplicate the effect of existing legislation.

We now turn to the Council's Policy. The relevant sections state as follows:

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 [our emphasis].**

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:

Effective and responsible management of premises

Training and supervision of staff

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)

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)

Provision of effective CCTV and mirrors in and around premises

Employment of Security Industry Authority licensed door staff

Provision of toughened or plastic drinking vessels

Provision of secure, deposit boxes for confiscated items ('sin bins')

Provision of litterbins and other security measures, such as lighting, outside premises

(j) Membership of local 'Pubwatch' schemes or similar organisations

Right to work checks on staff and retention of documents

We have heard from Mr Dadds, an advocate on behalf of the applicants and from Mr William Moody on behalf of Essex Police. We wish Mr Moody to be aware that we understand he only picked up this matter upon approximately an hours' notice, that he has no personal knowledge of these premises and that the

criticisms contained within this decision notice are in no way directed at him personally. He did the best he could in very difficult circumstances, frankly acknowledged the deficiencies in the Police case and we thank him for the assistance he was able to provide.

The case led by the Police was that Mr Z Choudhury had, in effect, never left the premises. Intelligence sources led them to believe he was still acting as manager and the inability of staff to access the CCTV system in the presence of the Police reinforced these concerns. It was their view that nothing had changed at the Queen Victoria and that the application before us today had been made because the applicants did not consider the premises were viable for them without his presence. Unfortunately, the burden of proving their assertions rested upon the Police and they failed to meet that burden. We have been referred to a number of obiter observations of ICC Judge Barber sitting as a judge of the Chancery Division in the case of *Stewart and Others v Watkin [2019] EWHC 1311* and as Mr Moody very fairly accepted, we had to note a failure to either produce S9 statements from officers involved in the case or redacted documents or records relating to other sources of intelligence. Like Judge Barber, we cannot stress too strongly the importance of basing allegations upon documentary or other primary evidence whenever possible. The Police have failed to discharge the evidential burden resting with them..

However, I repeat the provisions of the April 2018 edition of the Home Office Guidance. For the first time, it **specifically** includes immigration offences in the list of matters Licensing Committees are required to take into consideration, and 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 licensed premises for.....

Employing a person who is disqualified from that work by reason of their immigration status in the UK.

Mr Z Choudhury is a serial offender in this regard and the familial relationship between him and the applicants is such that if he is to be readmitted to the premises as a worker then it must be under close supervision and in a subordinate role.

As indicated earlier we have three options available to us today. We can grant the application as asked, grant it subject to conditions other than the one requested or refuse the application. Since the Police have failed to meet the evidential burden upon them we have opted for the second option in the light of a number of concessions made by Mr Dadds today.

The first is that the period during which Mr Z Choudhury is admitted to the premises as a worker will be time limited. Since Mr Dadds has told us that the reason for the application is to enable the business to survive during the current emergency and that Mr Z Choudhury has another job from which he has been temporarily laid off, we will lift the restriction upon him working at the premises for a period of twelve months or the cessation of the operation of the Government's furlough scheme for employees, whichever comes earlier. Currently the expected end date is October 2020 with some provisions for earlier part time return. The prohibition upon Mr Z Choudhury having management

participation in the business remains and the applicants must be very clear that this application is granted on the basis that when the furlough scheme is closed, social distancing is likely to have been ameliorated so the other employees of the business will once more be able to travel to work and his services will no longer be required.

Accordingly this application for a variation in condition 5 of the licence in the terms requested is refused, but the following variation is granted and henceforth clause 5 of the licence will read as follows:-

“Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business. Mr Omar Shorif will be excluded from the premises but the employment of Mr Ziaul Islam Choudhury in a subordinate role within the business under the personal supervision of the Designated Premises Supervisor will be permitted for a period of twelve months from the date hereof or until the cessation of the Coronavirus Job Retention Scheme whichever is sooner”

There is a right of appeal against this decision which must be exercised within a period of 21 days. The applicants and the Police will receive letters from the Legal Department explaining this.

12th May 2020 – Cllrs Lavelle (Chair), Day and Lees.