



Uttlesford District Council

Chief Executive: Dawn French

Licensing and Environmental Health Committee

Date: Tuesday, 12th May, 2020

Time: 1.00 pm

Venue: Zoom - <https://zoom.us/>

Chairman: Councillor **P Lavelle**

Members: Councillors S Barker, **C Day** (Vice-Chair), M Foley, R Freeman,
V Isham, **P Lees**, L Pepper and M Tayler

Substitutes: Councillors A Armstrong, A Coote, C Criscione, P Fairhurst, A Khan,
B Light, J Loughlin and E Oliver

AGENDA PART 1

Open to Public and Press

1 Apologies for Absence and Declarations of Interest

To receive any apologies for absence and declarations of interest.

2 Queen Victoria Premises Licence Major Variation

2 - 114

To consider a variation of a premises licence.

For information about this meeting please contact Democratic Services

Telephone: 01799 510369 or 510548

Email: Committee@uttlesford.gov.uk

General Enquiries

Council Offices, London Road, Saffron Walden, CB11 4ER

Telephone: 01799 510510

Fax: 01799 510550

Email: uconnect@uttlesford.gov.uk

Website: www.uttlesford.gov.uk

Agenda Item 2

Committee: Licensing and Environmental Health Committee

Date:
12th May 2020

Title: Application for a Major Premises Licence Variation – Queen Victoria, 79 Stortford Road, Great Dunmow, CM6 1DL

Report Author: Steve Mahoney, Senior Licensing Compliance Officer
smahoney@uttlesford.gov.uk

Summary

1. The application before the panel today is for the grant of a major variation of the Queen Victoria also known as Jalsa Ghar Restaurant, the application is dated 20 March 2020 and is made by Fazlul Bari Choudhury the premises licence holder. This report sets out details of that application for a major variation to a premises licence in respect of 79 Stortford Road, Great Dunmow, CM6 1DL. Representations have been made by Essex Police in response to this application so therefore this matter has been referred to the Committee for adjudication.
2. 79 Stortford Road Great Dunmow Public House and restaurant is situated in the town of Great Dunmow and is also known as Jalsa Ghar restaurant. A plan showing the location of the premises is attached as Appendix D.
3. An application for a grant of a premises licence at 79 Stortford Road, Great Dunmow was determined by the Licensing and Environmental Health Committee in June 2019 and the decision of this Committee was to grant the licence with conditions, one of which the applicant seeks to have removed with this Major Variation application.
4. This premises has been before the Licensing and Environmental Health Committee before and been the subject of Police attention all of which is on the time line of significant events appendix C.6 that forms part of the Essex Police representations pack.
5. The options open to the committee are set out by law, and are:-
 - To grant the application
 - To modify the application by inserting conditions
 - To reject the application

Recommendations

6. The application is determined

Financial Implications

7. None

Background Papers

The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

- (a) Variation of the Premises licence application (Appendix A)
- (b) Plan of the premises (Application B)
- (c) Representation from statutory consultee (Essex Police) (Appendix C)
- (d) Location map of premises (Appendix 0044)
- (e) Revised Guidance issued under section 182 of the Licensing Act 2003
- (f) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

Impact

Communication/Consultation	Details of the application were conveyed to Members of Uttlesford District Council, The Parish Council.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	<p>Under Article 1 First Protocol to the European Convention on Human Rights everyone is entitled to peaceful enjoyment of their possessions which includes property. This right may be interfered with if necessary to control the use of property in accordance with the general interest. The imposition of conditions under the Licensing Act 2003 is a legitimate interference with this right in this context.</p> <p>In the event that an applicant, responsible authority or interested party is dissatisfied with the decision of the committee there is a right of appeal to the Magistrates Court</p>
Sustainability	None
Ward-specific impacts	Great Dunmow being the ward within which the premises are situated
Workforce/Workplace	None

Situation

8. 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).
9. 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
10. 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
11. In carrying out its statutory function, the Licensing Authority must promote the licensing objectives as set out in the Licensing Act 2003. These are:-
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
12. There is no hierarchy of importance among them and all must be given equal weight.
13. The decisions that the Committee can make in respect of this application are to:
 - Grant the application
 - Modify the application by inserting conditions
 - Reject the whole or part of the application
14. When determining an application due regard should be given to the Council's licensing policy and the Secretary of States' Guidance issued in accordance with the 2003 Act.
15. The Secretary of State's Guidance was last updated in April 2018 and includes new and specific guidance in respect of immigration crime issues.
16. Paragraph 2.6 thereof specifically says the prevention of crime includes the prevention of immigration crime, including the prevention of illegal working in licensed premises. Licensing authorities are expressly required to work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

17. Paragraph 11.26 relates to reviews but it can be taken into consideration 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 and 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 wider community and not those of the individual licence holder”.

18. Paragraph 11.27 further states

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously...

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

19. The relevant sections of the Council’s Licensing Policy state:

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, 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 doorstaff
 - (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 [emphasis added]**

20. If the Committee's decision is to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relevant to the representations received. Furthermore, the Committee should not impose conditions that duplicate the effect of existing legislation.

21. The Secretary of State's Guidance provides at paragraphs 10.8 and 10.10 the following assistance for members-

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”.

22. If the Committee in their discretion wishes to impose 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, the Committee cannot impose conditions that duplicate the effect of existing legislation.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
1 Either no conditions are attached to the licence or the conditions do not satisfactorily achieve the licensing objectives the prevention of crime and disorder.	1The new Directors must ensure right to work checks are in place otherwise the licence would be subject to a further review.	2 The undermining of the licensing objective relating to the prevention of crime and disorder would be treated as a serious matter by the Licensing Authority	None

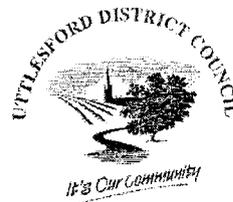
1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Uttesford District Council



Application to vary a Premises Licence under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We FAZLUL BARI CHOUDHURY

(Insert name(s) of applicant)

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number 422

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description THE QUEEN VICTORIA 79 STORTFORD ROAD			
Post town	GREAT DUNMOW	Postcode	CM6 1DL

Telephone number at premises (if any)	01371 873 330
Non-domestic rateable value of premises	£22,000

Part 2 – Applicant details

Daytime contact telephone number	01277 631811
E-mail address (optional)	office@dadds.co.uk

Current postal address if different from premises address	[REDACTED]		
Post town	[REDACTED]	Postcode	[REDACTED]

Part 3 - Variation

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible? Yes No

If not, from what date do you want the variation to take effect?

DD	MM	YYYY
[] []	[] []	[] [] [] []

Do you want the proposed variation to have effect in relation to the introduction of the late night levy? (Please see guidance note 1) Yes No

Please describe briefly the nature of the proposed variation (Please see guidance note 2)

To remove condition 5 Annexe 3 of the premises licence – namely; 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 add condition to the premises licence – namely;

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.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:

n/a

Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment (Please see guidance note 3)

Please tick all that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

Supply of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 8)			Will the performance of a play take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
Day	Start	Finis h		Both	<input type="checkbox"/>
Mon			<u>Please give further details here</u> (please read guidance note 5)		
Tue					
Wed			<u>State any seasonal variations for performing plays</u> (please read guidance note 6)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 8)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finis h	Please give further details here (please read guidance note 5)		
Mon					
Tue			State any seasonal variations for the exhibition of films (please read guidance note 6)		
Wed					
Thur			Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 7)		
Fri					
Sat					
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 8)			<u>Please give further details</u> (please read guidance note 5)
Day	Start	Finish	
Mon			
Tue			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 6)
Wed			
Thur			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 7)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 8)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 4)</u>	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here (please read guidance note 5)</u>		
Mon					
Tue			<u>State any seasonal variations for boxing or wrestling entertainment (please read guidance note 6)</u>		
Wed					
Thur			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list (please read guidance note 7)</u>		
Fri					
Sat					
Sun					

E

Live music Standard days and timings (please read guidance note 8)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finis h	Please give further details here (please read guidance note 5)		
Mon					
Tue			State any seasonal variations for the performance of live music (please read guidance note 6)		
Wed					
Thur			Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 7)		
Fri					
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 8)			<u>Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 4)</u>	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finis h	<u>Please give further details here (please read guidance note 5)</u>		
Mon					
Tue			<u>State any seasonal variations for the playing of recorded music (please read guidance note 6)</u>		
Wed					
Thur			<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 7)</u>		
Fri					
Sat					
Sun					

G

Performances of dance Standard days and timings (please read guidance note 8)			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 5)		
Tue					
Wed			State any seasonal variations for the performance of dance (please read guidance note 6)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list (please read guidance note 7)		
Sat					
Sun					

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 8)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	Will this entertainment take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			Please give further details here (please read guidance note 5)		
Wed					
Thur			State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g) (please read guidance note 6)		
Fri					
Sat			Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list (please read guidance note 7)		
Sun					

Late night refreshment Standard days and timings (please read guidance note 8)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			Please give further details here (please read guidance note 5)		
Tue					
Wed			State any seasonal variations for the provision of late night refreshment (please read guidance note 6)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 7)		
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 8)			Will the supply of alcohol be for consumption – please tick (please read guidance note 9)	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>State any seasonal variations for the supply of alcohol</u> (please read guidance note 6)		
Mon					
Tue					
Wed					
Thur					
Fri					
Sat					
Sun					
			<u>Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 10).

There is no activity of this nature

L

Hours premises are open to the public Standard days and timings (please read guidance note 8)			State any seasonal variations (please read guidance note 6)
Day	Start	Finish	
Mon			
Tue			Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 7)
Wed			
Thur			
Fri			
Sat			
Sun			

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

Only the condition specified to be removed and replaced in the variation application – all other conditions remain in place.

Please tick as appropriate

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

A certified copy of the premises licence is attached – The original licence will be delivered to the licensing authority under separate cover.

M Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 11)

All other conditions to remain as currently on the premises licence

b) The prevention of crime and disorder

c) Public safety

d) The prevention of public nuisance

e) The protection of children from harm

Checklist:

Please tick to indicate agreement

- I have made or enclosed payment of the fee; or
- I have not made or enclosed payment of the fee because this application has been made in relation to the introduction of the late-night levy.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
 - sent online and Licensing Authority will forward to responsible authorities
- I understand that I must now advertise my application.
- I have enclosed the premises licence or relevant part of it or explanation.
- I understand that if I do not comply with the above requirements my application will be rejected.

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 5 – Signatures (please read guidance note 12)

Signature of applicant (the current premises licence holder) or applicant's solicitor or other duly authorised agent (please read guidance note 13). If signing on behalf of the applicant, please state in what capacity.

Signature	<i>Dadds</i>
Date	20/03/2020
Capacity	APPLICANT'S SOLICITOR

Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant's solicitor or other authorised agent (please read guidance note 14). If signing on behalf of the applicant, please state in what capacity.

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 15) DADDS LLP CRESCENT HOUSE 51 HIGH STREET			
Post town	BILLERICAY, ESSEX	Post code	CM12 9AX
Telephone number (if any)	01277 631811		
If you would prefer us to correspond with you by e-mail, your e-mail address (optional) office@dadds.co.uk			

Notes for Guidance

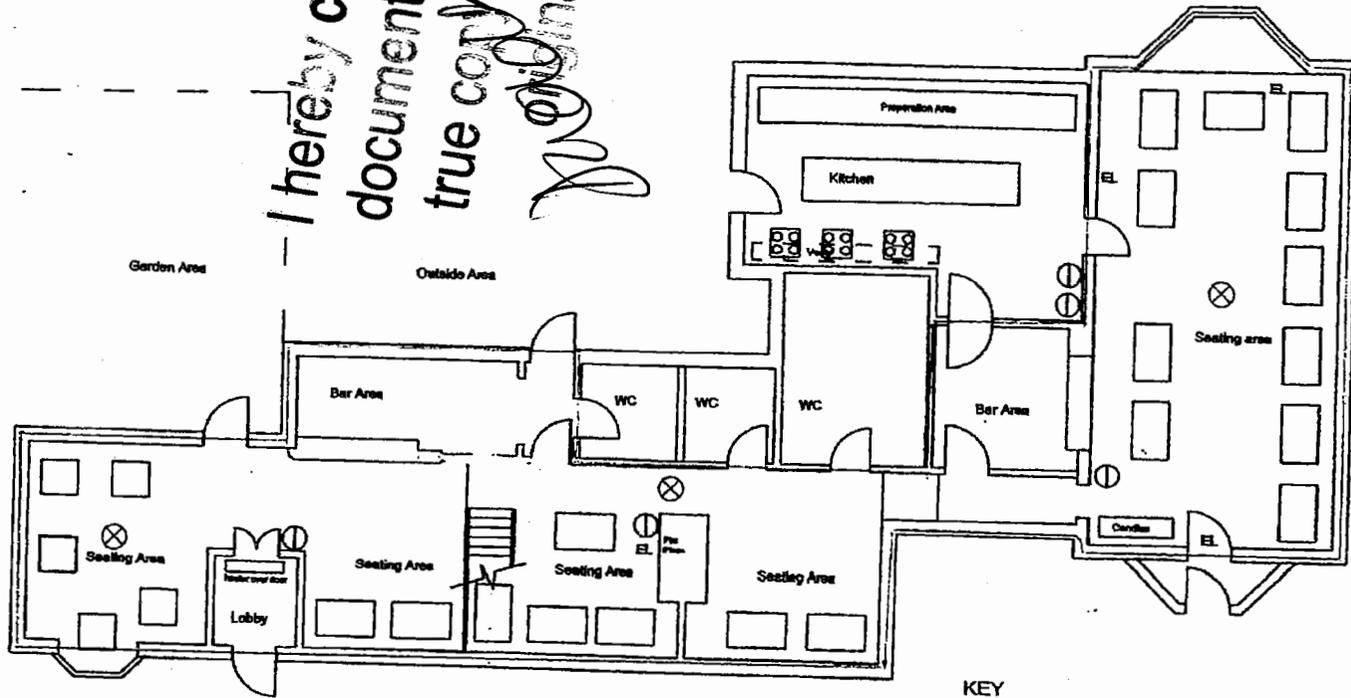
This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.

1. You do not have to pay a fee if the only purpose of the variation for which you are applying is to avoid becoming liable for the late night levy
2. Describe the premises. For example, the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place of consumption of these off-supplies of alcohol, you must include a description of where the place will be and its proximity to the premises.
3. In terms of specific regulated entertainments please note that:
 - Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
 - Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
 - Indoor sporting events: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
 - Boxing or Wrestling Entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000. Combined fighting sports – defined as a contest, exhibition or display which combines boxing or wrestling with one or more martial arts – are licensable as a boxing or wrestling entertainment rather than an indoor sporting event.
 - Live music: no licence permission is required for:
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.

- Recorded Music: no licence permission is required for:
 - any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.
 - Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500. However, a performance which amounts to adult entertainment remains licensable.
 - Cross activity exemptions: no licence is required between 08.00 and 23.00 on any day, with no limit on audience size for:
 - any entertainment taking place on the premises of the local authority where the entertainment is provided by or on behalf of the local authority;
 - any entertainment taking place on the hospital premises of the health care provider where the entertainment is provided by or on behalf of the health care provider;
 - any entertainment taking place on the premises of the school where the entertainment is provided by or on behalf of the school proprietor; and
 - any entertainment (excluding films and a boxing or wrestling entertainment) taking place at a travelling circus, provided that (a) it takes place within a moveable structure that accommodates the audience, and (b) that the travelling circus has not been located on the same site for more than 28 consecutive days.
4. Where taking place in a building or other structure please tick as appropriate (indoors may include a tent).
 5. For example state type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.
 6. For example (but not exclusively), where the activity will occur on additional days during the summer months.
 7. For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.
 8. Please give timings in 24 hour clock (e.g. 16.00) and only give details for the days of the week when you intend the premises to be used for the activity.
 9. If you wish people to be able to consume alcohol on the premises, please tick 'on the premises'. If you wish people to be able to purchase alcohol to consume away from the premises, please tick 'off the premises'. If you wish people to be able to do both, please tick 'both'.
 10. Please give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children regardless of whether you intend children to have access to the

- premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups or the presence of gaming machines.
11. Please list here steps you will take to promote all four licensing objectives together.
 12. The application form must be signed.
 13. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
 14. Where there is more than one applicant, each of the applicants or their respective agents must sign the application form.
 15. This is the address which we shall use to correspond with you about this application.

I hereby certify this document to be a true copy of the original



Ground Floor Plan

- KEY
- ⊗ Smoke Alarm
 - Ⓛ Fire Extinguisher
 - EL Emergency Lighting

QUEEN VICTORIA
79 STORTFORD RD
GREAT DUNMOW
ESSEX
CM6 1DL
☐ LICENSABLE AREA.

PL0422
ANNEX 4
UTTLESFORD DISTRICT
COUNCIL
LICENSING AUTHORITY



Re the representation against the grant of this licence under the prevention of crime and disorder objective LA2003:

Outline of circumstances leading to objection to application

It is requested that this objection is read in conjunction with the enclosed appendices. 1-6.

This premises were visited by the Immigration Enforcement teams on dates in 2013, 2014, 2016 and 2018. On each occasion illegal workers were found, resulting in a total of 19 persons being detained, civil penalties and most recently the revocation of the premises licence. Essex Police stress for your awareness that at the time of each of these findings the premises was owned and operated by Aldbrook Ltd. The same company now still owns and operates the business though this application is made in the name of Mr Fazlul Bari CHOUDHURY.

It is also worth noting that the main applicant, Mr Fazlul Bari CHOUDHURY has been a director or major shareholder in Aldbrook LTD since its inception in 2011. Since 2013 Mr CHOUDHURY has been the company's sole director with Mr Ziaul Islam CHOWDHURY being a shareholder since 2013. The notable exception of the period where 'ownership' was passed to was to Shawkat Karim CHOWDHURY and Hadayouth CHOUDHURY (FB CHOUDHURY's Nephew) with the application to transfer the licence under the guise of 'new and changed management'. With the rejection of the application so came the reinstatement of Fazlul Bari CHOUDHURY as sole director.

Appendix 6, Timeline of significant events, outlines the changes in directorships and allocation of shares in relation to the various immigration raids and licence applications. It clearly shows that prior to an application, the business was transferred to the relevant individual and when refused, the business was transferred straight

back. This only strengthens the argument that these transfers are merely a tactic used to disguise the fact that the business is run by the same individuals.

It is Essex Police's contention that the intention of the applicant is in no way honourable. The premises recent history under the leadership of the very same persons demonstrates that there have been no lessons learnt here and this is merely a belligerent attempt to get the applicant's own way and reinstate the business as it has been for many.

The condition that this variation application seeks to remove was added following the application for a new grant in June 2019, by the licensing sub-committee and intended to ensure the poor management and illegal operations as outlined above were not repeated. (See appendix 5)

During the June 2019 application hearing following representations from Essex Police (appendix 4), which focussed on Essex Police's belief that there was no real change to the management structure and the previous attempts to transfer and new grant applications were being made in name only whilst Mr Ziaul Islam continued to have day to day control and run the business. To counter these claims and indicate that this could not be further from the truth, much was made by the premises licence applicant in June 2019, the same applicant for this variation, that to apply a condition naming Mr Ziaul Islam, along with Mr Omar Sharif, specifically excluding them from the premises and ergo, the business; would be of mutual benefit...to him in so much as it would 'prove' to the police that all poor management and prior illegal operations could be placed on their shoulders and that by breaking ties and banning them from the premises he could ensure such practices left with them; and to the authorities, a show of a clean slate, whilst he remained the business owner he would no longer leave the running of it to others and would have a firm hand in ensuring it was all run properly from now on.

The licensing committee at this time took Mr Falzul Bari Chowdhury at his word and applied the condition in good faith.

As part of Mr Falzul Bari Chowdhury's assertions that not only would this be a condition which would ensure the management of the premises was conducted by himself or trusted others and most certainly not Mr Ziaul Islam Choudhury, it was stated that to police this condition effectively CCTV would constantly record and would be made available for checks at any time to both the Police and Licensing Authority.

Shortly after the grant of this licence, in September 2019 Essex Police received intelligence that Ziaul Islam Choudhury was still frequenting the premises and acting in capacity of manager. This was reported on more than one occasion and specifics about the times and events were given.

Acting on this intelligence visits to the premises were conducted and CCTV requested. Staff attempting to access the CCTV system to facilitate this were unable to successfully access the system and officers reported that the system appeared to keep 'booting them out' at every attempt.

Further intelligence was received following the officers visit to suggest Ziaul Islam Choudhury was controlling the CCTV system remotely via an app on his mobile phone. He was heard laughing about doing this at the premises later that evening.

Following the visit, conducting, as we had been invited by the applicant on suggestion of this condition to do, Essex Police Licensing received contact from the applicants solicitor stating that IF Mr Ziaul Islam had been at the premises at all it was only to collect property and he would not be returning.

The suspected breach of conditions was noted and passed to the local authority.

It appears to Essex Police that none of the management structure has not changed at this premises and the request to make amendments to this condition on the premises licence is because the applicant needs to allow Ziaul Islam Choudhury a more overt management role.

I enclose the previous representations made by Essex Police and ask that in considering this application, they show how the latest request makes a mockery of those decisions and underlines Essex Police's notion that throughout each application the key players have not changed, despite many assertions to the contrary at various stages. This indicates that potentially, neither have the working practices. The grant of the variation as requested, for that reason, gives rise to very real concerns from Essex Police, that to do so would undermine the prevention of crime and disorder objective of the Licensing Act 2003.

Appendices:

1. Uttlesford District Council Licensing Sub Committee Decision notice Transfer 2018
2. Uttlesford District Council Licensing Sub Committee Decision Notice Review 2018
3. Uttlesford District Council Licensing Sub Committee Decision Notice New Grant 2018
4. Essex Police Representations against New Grant 2019
5. Uttlesford District Council Licensing Sub Committee Decision Notice New Grant 2019
6. Timeline of Significant Events

Appendix C.1

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.

Appendix C.2

DECISION NOTICE – QUEEN VICTORIA PUBLIC HOUSE/JALSA GHAR INDIAN RESTAURANT

The application before the Panel today is for a review of the premises licence to the Queen Victoria, 79 Stortford Road, Great Dunmow at the behest of Essex Police, supported by the immigration authorities pursuant to licensing objective number one, the prevention of crime and disorder. In reaching our decision today we have taken into account the provisions of the Licensing Act 2003, the most recent Home Office Guidance, issued this year which specifically incorporates references to immigration issues, and the Council's Statement of Licensing Policy. We also have before us a document pack containing a report from the Licensing Team Leader, the premises licence, some maps and plans, the Police application, Home Office comments, a number of letters and testimonials from interested parties, and most recently, a bundle of personnel documentation submitted by the licensees.

Historically, the current licence was granted on 9th November 2005. No representations were made and the application was granted as asked. Following a raid on the premises made by UKBA and the Police on 6th July 2018, in the course of which persons with no right to work in the UK were apprehended (two of those persons also had no right to be in the UK). It appeared no right to work checks were being carried out as required by the various Immigration Acts. This amounts to a breach of licensing objective number one, the prevention of crime and disorder, and for the sake of completeness we set out the four objectives enshrined in the 2003 Act. These are:-

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

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 it's 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*)

Following receipt of the Police application, a notice of review was issued by Uttlesford District Council's licensing department personally served on 18 July 2018. The manager was not present and unable to be contacted so the Enforcement Officer explained to the staff members present what was happening and that the notice being put up in the window had to remain in position for 28 days. All statutory formalities have been observed.

The decisions available to the Committee upon a review are to:

- 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

When carrying out a review of a licence, due regard should be given to the Council's licensing policy and Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003. The Secretary of State's most recent guidance issued in April this 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. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises

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 are retained at the licensed premises’.

Paragraph 4.22 highlights the importance placed on immigration offences, as it considers that it is grounds for objecting to the granting of a personal licence on the basis that it would be prejudicial to the prevention of crime and disorder.

Paragraph 8.99 says (although in respect of objections to the transfer of a premises licence, again highlights that it would be appropriate), ‘in exceptional circumstances for objections to be raised by the police or immigration officials where the transfer would be prejudicial to the prevention of illegal working.’

Furthermore, these following paragraphs of the Guidance deal specifically with a review of the premises licence , where crime and disorder is an issue. It highlights the seriousness with which the Secretary of State expects licensing authorities to treat immigration offences on licensing premises.

Paragraph 11.18 says ‘Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.’ I add that for civil immigration policies to apply there must be a contract of employment which is not the norm in the catering/hospitality industry.

Paragraph 11.26 says ‘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; [our emphasis]**
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. ‘

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.’

Further, the Council’s licensing policy has the following relevant paragraphs

- 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, 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 Doorstaff
- (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

If the Committee wishes to impose condition for the continuance of the 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. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation. We cannot therefore impose a condition regarding the undertaking of right to work checks – they are a legal requirement under the Immigration Acts

The Secretary of State's Guidance provides further assistance, and in paragraphs 10.8 and 10.10 it provides: -

- 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 considered all the material before us with care and we have heard from Mrs Powell and Mr Ashford on behalf of Essex Police, Immigration Officer Gear on behalf of the Home Office, and from Messrs Choudhury and Sharif. Their solicitor, Mr Harman, has also spoken on their behalf.

We have also listened to a number of members of the public, who I will not list, but in listening to them we have been mindful that Regulation 19(b) Licensing Act 2003 (Hearings) Regulations 2005 requires us to disregard information given by anyone that is not specifically relevant to the promotion of a licensing objective: what these people had to say was in the character of character referees only and we did not that they dealt only with Mr Choudhury. We therefore give what they said no weight. We have noted the history of the premises and observed that on his own admission in 2013 and again in 2014 the business was sanctioned. Similarly, another business

operated by Messrs Choudhury and Sharif, the Pride of Sylhet, was sanctioned in 2011 for the same reason. There have been ample opportunities for lessons to be learned.

We have taken into account everything we have both read and heard and at this point 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.

A civil penalty of up to £20,000 can only be levied if there is a contract of employment: however, the use of the words “disqualified from that work” suggest the Guidance also covers those who under the employment protection legislation are referred to as “Limb B” workers.

This Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states

“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.” We respectfully adopt this. Furthermore, His Lordship then said “...the respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked”. This case is on all fours with the one before us today, and in the light of the revised Guidance reinforcing the point, we agree with His Lordship’s conclusion.

The evidence we have seen shows that the individuals concerned admitted working without the proper immigration checks having been undertaken, and furthermore,

that one of them also admitted to working less than minimum wage, ie for board and lodging, which is also a breach of other employee rights legislation. Finally, we cannot overlook the fact that this is not a first offence: this is the fourth time immigration officers have visited the premises, we also take into account the incident at the Pride of Sylhet, and we also appreciate that an Illegal Working Civil Penalty may only be imposed if the existence of a contract of employment can be established.

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 Choudhury and Mr Sharif have 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 Zara Restaurant [2016] EWHC 1265* and are satisfied that even though on this occasion so far as we are aware Mr Choudhury 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 Choudhury engaged the 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 license remains in force. Mr Choudhury will receive a letter from the Legal Department explaining this.

Appendix C.3

DECISION NOTICE – QUEEN VICTORIA, STORTFORD ROAD, DUNMOW

The application before the Panel today is for the grant of a new premises licence of the Queen Victoria, Stortford Road, Dunmow.. The application is dated 26th September 2018 and is made by Aldbrook Limited

Representations have been made by Essex Police 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:-

- (a) Premises licence application (Appendix A)
- (b) Plan of premises (Appendix B)
- (c) Representation from Statutory consultee (Essex Police) (Appendix C)
- (d) Location map of premises (Appendix D)
- (e) A bundle of supplementary information from the Police including full set of the information held by Companies House in respect of the applicant company
- (f) Revised Guidance issued under section 182 of the Licensing Act 2003
- (g) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

We have also seen some documents submitted late by the applicant's agent Stuart Gibson regarding the share transfers. This includes P45s for the outgoing directors but we are mindful of the fact that there is no legal requirement whatsoever for a director to be an employee and so we give these very little weight.

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:

(J) Supply of Alcohol for consumption on the premises (on the premises)

Monday to Saturday 10am - 11pm

Sunday 10am - 10.30pm

(L) The opening hours of the premises

Monday to Saturday 10am – 11.30pm

Sunday 10am - 11pm

Copies of the application have been served on all of the statutory bodies, and has attracted representations from Essex Police based on the Crime and Disorder objective. Details of these representations can be seen at Appendix C and the supplementary documents and we have also heard from Mrs Powell and Mr Ashford from Essex Police. We also heard from Mr Gibson, the applicant's licensing agent and from Messrs Shawkat and Wazadur Chowdhury themselves.

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 options 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 most recent version is dated April 2018 and we are mindful of the contents thereof. It 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 [our emphasis];**
- 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 [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:

- (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 Mrs Powell, who presented the Police case supported by Mr Ashford.

We have also heard from Mr Gibson on behalf of the applicant company and from the two Messrs Chowdhury. Unfortunately, the latter have failed to convince us regarding a number of matters, and we are extremely concerned regarding whether or not the sale of this business is genuinely an arms length transaction between unconnected persons. On the balance of probabilities we believe that it is not.

The previous owner, Mr Ziaul Chowdhury, has tried to lobby some of our number. Why? The financial information before us makes no mention of the ownership of and payment of the outgoings upon the physical premises at Stortford Road. The person whom Mr S Chowdhury believes to be the landlord, a Mr Hussein from Turkey, is not the registered proprietor of the building and there is no note of any leasehold interests upon the title at HM Land Registry. Nobody undertakes works as substantial as the rethatching of a roof without having a secure legal interest in the property. A transfer of shares in a limited company that does not own its operating assets is not the transfer of a business and neither Mr S nor Mr W Chowdhury could give proper explanations for this failure. Nor do we believe that Mr W Chowdhury can act as designated premises supervisor for two sets of premises AND work as a taxi driver, and we recall from the previous hearings before us that Mr Z Chowdhury mentioned his dedication of time and effort to a restaurant business in Sawston as being why he neglected certain aspects of the management of the Queen Victoria.

We have considered all the material before us very carefully indeed, including the documents put before us for the first time today, and we are mindful of the history of these premises vis a vis the licensing authority over the past six months. To recap, the applicant is Aldbrook Ltd and that company has at all material times operated a business from these premises trading as Jalsa Ghar. This company has employed the workers in this business and has accounted to HMRC for taxes. Aldbrook itself

acquired the assets of its business from the liquidator of a company called Jalsa Ghar (UK) Ltd, also based at 79 Stortford Road, of which the outgoing licensees, Ziaul Choudhury and Omar Shorif, were shareholders. They became directors of Aldbrook between December 2011 and February 2012, while remaining as shareholders until Autumn 2018.

The share transfers of which we have heard today took place very shortly after the revocation of the previous licence. The transfer of shares in a company that does not own the operating assets of the business does not necessarily a sale of that business make, plus the P45s submitted in respect of the outgoing directors have no probative value whatever. A director does not have to be an employee and the fact that a person is now holder of shares does not mean they are the true beneficial owner of them. No prudent businessman would enter into a contract under which a further payment is due upon the occurrence of a contingency without that agreement being evidence in writing, and Aldbrook's financial statements make no mention of either a lease of the premises or payment of a substantive rent. In the light of all this, and the inability of Messrs Chowdhury to answer our questions, reinforces the feeling that this is not a true sale to bona fide purchasers for value at arms length..

Continuing, we note there was also a third director, Fazul Bari Chowdhury, who remained in post throughout and is recorded as being resident at the same address as Hadayouth Ahmed Chowdhury, who also figures in the history of these premises, see post.

Ziaul Choudhury held a 75% shareholding giving him significant control. On 19th September, again within the appeal period for the revocation of the licence, a 75% shareholding was acquired by Shawkat Karim Chowdhury, notification being given to Companies House in form PSC01 on 27th September. He has also been appointed a director.

Further searches carried out by the Police against SK Chowdhury at Companies House show that he is also a director of Comfort Transport (UK) Ltd. We have learned today that that company is a taxi firm licensed by TfL. That company's other director is Hadayouth Ahmed Chowdhury (see above) who unsuccessfully applied

for a transfer of the premises licence to him on 21st August 2018 in the hope of forestalling the 11th September review. Mr H Chowdhury worked in the business in a management role at that time though we are told he has ceased to do so.

Similar directorship searches against Ziaul Choudhury revealed involvement with another company called Karhold Ltd: a co-director of this company was one Wazadur Chowdhury, who holds the premises licence for Kaz's Indian Restaurant, Sawston, which is the premises in Sawston referred to by Mr Z Chowdhury in evidence before us in September. The manner in which Mr W Chowdhury acquired that business from Mr Z Chowdhury is identical to the way in which this business has been transferred.

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; at all material times this business has been operated by closely connected persons. The corporate veil is being used to provide a structure whereby these associated persons may trade in common. We cannot ignore the history of the premises and observe that businesses operated by these people have on several occasions been sanctioned for immigration offences. There have been ample opportunities for lessons to be learned. We have no guarantee whatsoever that they will be, and furthermore an attempt has been made by Mr Z Chowdhury to lobby members of this Committee. This aspect of the matter has been referred to the Council's Monitoring Officer.

This only serves to reinforce the Police contentions, and Mr S Chowdhury did have to admit that there is indeed a verbal agreement for the payment of a further [REDACTED] to Mr Z Chowdhury if a licence is granted today. He further admitted that the business was worthless without a licence which to our minds poses yet further questions regarding the bona fides of this application.

I repeat, we have taken into account everything we have both read and heard and at this point 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.

This Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states
“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.” We respectfully adopt His Lordship’s conclusion albeit in the context of the grant of a new licence. The directors and shareholders of Aldbrook Ltd are not fit and proper people to hold a licence.

It is very clear that this closely linked group have traded collaboratively from these premises since before 2000. It is equally plain that they will continue to do so and that nothing has changed. 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. The Applicant will receive a letter from the Legal Department explaining this.



Objection to the Grant of New Premises Licence

The Queen Victoria/Jalsa Ghar

79 Stortford Road, Great Dunmow, CM6 1DL

Supplementary documentary information in support of objection.



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Re the representation against the grant of this licence under the prevention of crime and disorder objective LA2003:

1.0 Outline of circumstances leading to objection to application

- 1.1 This premises was raided on dates in 2013, 2014, 2016 and 2018. On each occasion illegal workers were found, resulting in a total of 19 persons being detained, civil penalties and most recently the revocation of the premises licence. Essex Police stress for your awareness that at the time of each of these findings the premises was owned and operated by Aldbrook Ltd. The same company now still owns and operates the business though this application is made in the name of Mr Fazlul Bari CHOUDHURY.
- 1.2 It is also worth noting that the main applicant, Mr Fazlul Bari CHOUDHURY has been a director or major shareholder in Aldbrook LTD since its inception in 2011. Since 2013 Mr CHOUDHURY has been the company's sole director with the notable exception of the period where 'ownership' was passed to was to Shawkat Karim CHOWDHURY and Hadayouth CHOUDHURY (FB CHOUDHURY's Nephew) with the application to transfer the licence under the guise of 'new and changed management'. With the rejection of the application so came the reinstatement of Fazlul Bari CHOUDHURY as sole director.
- 1.3 The remainder of this document will further enhance awareness of the persistent disregard for the legalities of legitimate employment, the undisputed links between the present applicant and previous owners and operators of the business and the likelihood of the Prevention of Crime and Disorder objective to be undermined should this application be granted. A likelihood which is in the committee's power to determine and prevent.
- 1.4 Essex Police in particular wish to draw the sub committees attention to the time line of events (Document 1), the listed shareholders and directors (Documents 2 and 3) and the previously submitted supplementary bundle (Copy enclosed for ease of reference), and also to the East Lindsay V Hanif case, discussed later in this document tells the licensing authority that it can anticipate the future based on past event. This is an established business practice.
- 1.5 Document 1 outlines the changes in directorships and allocation of shares in relation to the various immigration raids and licence applications. It clearly shows that prior to an application, the business was transferred to the relevant individual and when refused, the business was transferred straight back. This only strengthens the argument that these transfers are merely a tactic used to disguise the fact that the business is run by the same individuals.

- 1.6 It is Essex Police's contention that the intention of the applicant is in no way honourable. The premises recent history under the leadership of the very same persons demonstrates that there have been no lessons learnt here and this is merely a belligerent attempt to get the applicant's own way and reinstate the business as it has been for many. Consider the possibility that to grant this application may be to concede to the undermining of legitimate business.
- 1.7 The applicant for this licence is Fazlul Bari CHOUDHURY. Fazlul Bari CHOUDHURY has been intimately connected with the premises for a number of years both as an employee and a significant person of Aldbrook Limited, the current legal entity behind The Queen Victoria/Jalsa Ghar. The premises licence was previously held jointly by a Ziaul CHOWDHURY and Omar SHORIF (until revocation of the licence on 11th September 2018) (Document 5). The licence was revoked as a consequence of illegal workers being found on the premises in July 2018 (4 illegal workers found). Previous to this the premises were also found to have employed illegal workers in 2013 (8 illegal workers), 2014 (4 illegal workers) and 2016 (3 illegal workers) when still owned by Aldbrook Limited.
- 1.8 Fazlul Bari CHOUDHURY has been a director and/or a major shareholder of Aldbrook Limited since its creation in 2011. Since 2013 Fazlul Bari CHOUDHURY has been the sole director, excepting the brief period where directorship was handed to Shawkat Karim CHOWDHURY and Wazadur Rob CHOWDHURY in preparation for a new grant application.
- 1.9 Following the immigration raid in July 2018 that prompted the call for review; an application was made to transfer the licence to Shawkat Karim CHOWDHURY and Hadayouth CHOUDHURY. It was ascertained that both were related to both Fazlul Bari CHOUDHURY and to the then DPS.
- 1.10 At a hearing on 21 August 2018 regarding objections to the transfer of the licence (a transfer application made the next working day after the immigration enforcement raid that led to the review hearing) the police successfully argued that this was a transfer in name only and that the same controlling minds were in place. The transfer application was refused and subsequently the licence revoked (at separate hearings).
- 1.11 The ownership of the premises and its proposed method of operation has not significantly changed. Fazlul Bari CHOUDHURY was involved in both the running of The Queen Victoria/Jalsa Ghar, as well as being a significant person in the legal entity behind the business on all occasions of illegal workers being discovered.

- 1.12 As with the previous attempt to transfer the licence, the application before the sub-committee today is, in the police's view, just another attempt to 'pull the wool' over the authorities eyes. Aldbrook Limited was, and is, a family business providing a structure to bring profit to the extended family and provide its members with employment as managers of the premises in question. These connections show a clear link between Fazlul Bari CHOUDHURY, Aldbrook Limited and those responsible for previous criminality and are viewed by Police as an attempt to 'reinstate' the revoked licence in the light of the failure of the past transfer attempt.
- 1.13 There is no suggestion the company has been sold to outside independent interests, or that management control has changed, therefore there is significant scope to suggest the crime and disorder (namely potential for illegal working) objective will be engaged for all the reasons outlined in the upheld application for revocation.
- 1.14 East Lindsey District Council V Abu HANIF (2016) EWHC 1265 Admin, demonstrates the acceptance of the Licensing Objectives as being *prospective* and are concerned with the future avoidance of harm. Previous occurrences inform the likelihood of further criminality and the sub-committee are entitled to take this into consideration when making a decision.
- 1.15 The case of *East Lindsey District Council v Hanif* (see 8.11) determined that in such circumstances, even without a prosecution, the crime prevention objective is engaged. The statutory Guidance issued under the Licensing Act provides that certain criminal activity (in particular employing illegal workers) should be treated particularly seriously and it is envisaged that the police will use the review procedures effectively to deter such activities and crime.
- 1.16 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee.
- 1.17 Mr Justice Jay stated: *"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in*

the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required.” (Paragraph 18)

- 1.18 Mr Justice Jay added: *“Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked.” (Paragraph 23)*
- 1.19 An action intended to be both punishment and deterrent. An action undermined in any case if reapplication by connected parties is unchallenged and rewarded with effective reinstatement of a premises licence.
- 1.20 We have a history of immigration crime, evidenced in previous submissions. The Companies House data shows that the original majority shareholder had declared it was a family business, which is now the same company going forward and running the business. Those involved in management were involved when previous offences were committed, one of which was the applicant Fazlul Bari CHOUDHURY.
- 1.21 This is a company with evidence of continuous and wilful disregard for legislation. The history of this business, which, as outlined by Mr Justice Jay, is absolutely right to take into consideration, undermines in a most serious way the prevention of Crime and Disorder objective with illegal workers found in 2013, 2014, 2016 and again in 2018.
- 1.22 1.21 The sub-committee are asked to consider (below) the cases of *R (Bassetlaw District Council) v Worksop Magistrates’ Court*; [2008] WLR (D) 350 and *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway)*, [2016] EWHC 1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.
- 1.23 Paragraph 11.27 of the Guidance states:
- a. *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 status in the UK.*
- 1.24 The statutory crime prevention objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises.

In particular, employing a person who is disqualified from work by reason of their immigration status is a criminal activity which, according to the Home Office Guidance to the Licensing Act 2003, should be treated “particularly seriously”. Essex Police would ask that the sub-committee consider this in addition to the information and evidence provided when making their decision on this matter.

2.0 Reasons for representations

- 2.1 Based on the circumstances outlined above, Essex Police has serious concerns that the Crime and Disorder licensing objective will be breached, namely in the form of employing illegal workers.
- 2.2 There is a clear pattern of behaviour from the business concerning the employment of persons who are disqualified from work by reason of their immigration status.
- 2.3 Despite numerous changes in directors and shareholders of the legal entity, Essex Police are of the opinion that there has not been a significant enough change in the way the business will be managed to allay these concerns.
- 2.4 The most recent application is in the name of Fazlul Bari CHOUDHURY, who is also the current director and 100% shareholder of Aldbrook Limited (Documents 2 and 3). Mr Fazlul CHOUDHURY was also the director of Aldbrook Limited during all listed incidences of illegal workers being discovered working at the premises. It would be reasonable to believe that as Mr Fazlul CHOUDHURY had a financial interest in the business at the time, he would also have had a say in the operation of said business.
- 2.5 A civil penalty resulting from an immigration issue is a relevant offence. A penalty was issued on 27th November 2018 in relation to the illegal workers found in July 2018 and was still being paid as of 5th June 2019. If Fazlul CHOUDHURY had been operating as a sole trader rather than a limited company, he would have been barred from obtaining a personal licence. Essentially he is protected by the incorporation of Aldbrook Limited. As such, this company appears to have accepted the penalty without contest and is in the process of paying it off.

3.0 Outcomes sought

- 3.1 Based on the circumstances outlined above, Essex Police seeks the refusal of the granting of a new premises licence.
- 3.2 Proposed conditions in the application regarding conducting right to work checks cannot be supported, as there is existing legislation requiring businesses to conduct these checks as a matter of course.
- 3.3 The exclusion of certain individuals from the premises holds little weight, as the proposed premises licence holder has been involved in the running of the business during all instances of illegal workers being discovered.

Document 1

Date	Event	Directors/significant persons at the time	Shareholders at the time (based on documents filed with Companies House)
2 November 2011	Incorporation of Aldbrook Limited	<ul style="list-style-type: none"> • Arthur Barber 	
16 December 2011	Change of directors	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam (secretary) • Shorif, Omar • Chowdhury, Mahsana 	
15 February 2012	Resignation of Z Chowdhury, O Shorif and F Chowdhury as directors from Aldbrook Limited	<ul style="list-style-type: none"> • Chowdhury, Mahsana 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
05 March 2012	Liquidation of Jalsa Ghar (UK) Limited – due to low turnover and HMRC debts	<ul style="list-style-type: none"> • Chowdhury, Mahsana 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
08 March 2012	Purchase of Jalsa Ghar (UK) Limited assets by Aldbrook Limited	<ul style="list-style-type: none"> • Chowdhury, Mahsana 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
11 October 2013	Change of directors of Aldbrook Limited from M Chowdhury to F Chowdhury	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar

05 December 2013	8 Illegal workers found during raid	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
July 2014	4 Illegal workers found during raid	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
August 2016	3 Illegal workers found during raid	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari – 75%+ • Shorif, Omar – 25-50%
06 July 2018	4 Illegal workers found during raid– Aldbrook Limited liable for penalty	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
12 July 2018	Application to transfer premises licence to H Chowdhury and MDA Chowdhury – refused	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
21 August 2018	Application for DPS variation to H Chowdhury – refused	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
21 August 2018	Hearing for DPS variation - refused	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
11 September 2018	Hearing for review of Premises Licence – licence revoked	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
19/20 September 2018	Addition of S Chowdhury and W Chowdhury as directors of Aldbrook Limited	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Shawkat Karim 	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim (remaining 25%+ not mentioned on companies house)

		<ul style="list-style-type: none"> • Chowdhury, Wazadur Rob 	
27 September 2018	Resignation of F Choudhury as director of Aldbrook Limited	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim (remaining 25%+ not mentioned on companies house)
26 September 2018	New Grant premises licence application for Aldbrook Limited – refused	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim (remaining 25%+ not mentioned on companies house)
19 November 2018	Hearing for above new grant - refused	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari Shorif, Omar
23 November 2018	Change in directors from S Chowdhury and W Chowdhury to F Chowdhury and O Shorif for Aldbrook Limited	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
05 February 2019	Resignation of O Shorif as director of Aldbrook Limited	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari
14 May 2019	Transfer of 100% shares in Aldbrook Ltd to F Choudhury	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari
31 May 2019	Application to transfer premises licence to F Choudhury and DPS to H Choudhury	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari

Date of annual return or change	Allocation of shares (Aldbrook Ltd)
02 November 2012	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2013	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2014	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2015	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2016	Choudhury, Fazlul Bari – 75%+ Shorif, Omar – 25-50%
19 September 2018	Chowdhury, Shawkat Karim – 75%+ (remaining 25%+ not mentioned on companies house)
02 November 2018	Choudhury, Fazlul Bari – 800 Chowdhury, Ziaul Islam – 0 (300 transferred to Fazlul 25/10/18) Shorif, Omar – 400
23 November 2018	Choudhury, Fazlul Bari – 1200 Shorif, Omar – 0 (400 transferred to Fazlul 23/11/18)

DOCUMENT 2



Companies House

CS01 (ef)

Confirmation Statement

Company Name: **ALDBROOK LIMITED**

Company Number: **07831708**



Received for filing in Electronic Format on the: **03/12/2018**

X7JZTB3E

Company Name: **ALDBROOK LIMITED**

Company Number: **07831708**

Confirmation Statement date: **02/11/2018**

Statement date:

Electronically filed document for Company Number: **07831708**

Full details of Shareholders

The details below relate to individuals/corporate bodies that were shareholders during the review period or that had ceased to be shareholders since the date of the previous confirmation statement.

Shareholder information for a non-traded company as at the confirmation statement date is shown below

Shareholding 1: **800 ORDINARY shares held as at the date of this confirmation statement**

Name: **FAZLUL BARI CHOUDHURY**

Shareholding 2: **300 transferred on 2018-10-25**

0 ORDINARY shares held as at the date of this confirmation statement

Name: **ZIAUL ISLAM CHOWDHURY**

Shareholding 3: **400 ORDINARY shares held as at the date of this confirmation statement**

Name: **OMAR SHORIF**

DOCUMENT 3



Companies House

CS01 (ef)

Confirmation Statement

Company Name: **ALDBROOK LIMITED**

Company Number: **07831708**



X85GJ1WO

Received for filing in Electronic Format on the: **14/05/2019**

Company Name: **ALDBROOK LIMITED**

Company Number: **07831708**

Confirmation **14/05/2019**

Statement date:

Electronically filed document for Company Number: **07831708**

Full details of Shareholders

The details below relate to individuals/corporate bodies that were shareholders during the review period or that had ceased to be shareholders since the date of the previous confirmation statement.

Shareholder information for a non-traded company as at the confirmation statement date is shown below

Shareholding 1: **1200 ORDINARY shares held as at the date of this confirmation statement**

Name: **FAZLUL BARI CHOUDHURY**

Shareholding 2: **400 transferred on 2018-11-23
0 ORDINARY shares held as at the date of this confirmation statement**

Name: **OMAR SHORIF**

DOCUMENT 4

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.

DOCUMENT 5

DECISION NOTICE – QUEEN VICTORIA PUBLIC HOUSE/JALSA GHAR INDIAN RESTAURANT

The application before the Panel today is for a review of the premises licence to the Queen Victoria, 79 Stortford Road, Great Dunmow at the behest of Essex Police, supported by the immigration authorities pursuant to licensing objective number one, the prevention of crime and disorder. In reaching our decision today we have taken into account the provisions of the Licensing Act 2003, the most recent Home Office Guidance, issued this year which specifically incorporates references to immigration issues, and the Council's Statement of Licensing Policy. We also have before us a document pack containing a report from the Licensing Team Leader, the premises licence, some maps and plans, the Police application, Home Office comments, a number of letters and testimonials from interested parties, and most recently, a bundle of personnel documentation submitted by the licensees.

Historically, the current licence was granted on 9th November 2005. No representations were made and the application was granted as asked. Following a raid on the premises made by UKBA and the Police on 6th July 2018, in the course of which persons with no right to work in the UK were apprehended (two of those persons also had no right to be in the UK). It appeared no right to work checks were being carried out as required by the various Immigration Acts. This amounts to a breach of licensing objective number one, the prevention of crime and disorder, and for the sake of completeness we set out the four objectives enshrined in the 2003 Act. These are:-

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

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 it's 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)

Following receipt of the Police application, a notice of review was issued by Uttlesford District Council's licensing department personally served on 18 July 2018. The manager was not present and unable to be contacted so the Enforcement Officer explained to the staff members present what was happening and that the notice being put up in the window had to remain in position for 28 days. All statutory formalities have been observed.

The decisions available to the Committee upon a review are to:

- 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

When carrying out a review of a licence, due regard should be given to the Council's licensing policy and Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003. The Secretary of State's most recent guidance issued in April this 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. Licence conditions that are

considered appropriate for the prevention of illegal working in licensed premises 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 are retained at the licensed premises’.

Paragraph 4.22 highlights the importance placed on immigration offences, as it considers that it is grounds for objecting to the granting of a personal licence on the basis that it would be prejudicial to the prevention of crime and disorder.

Paragraph 8.99 says (although in respect of objections to the transfer of a premises licence, again highlights that it would be appropriate), ‘in exceptional circumstances for objections to be raised by the police or immigration officials where the transfer would be prejudicial to the prevention of illegal working.’

Furthermore, these following paragraphs of the Guidance deal specifically with a review of the premises licence , where crime and disorder is an issue. It highlights the seriousness with which the Secretary of State expects licensing authorities to treat immigration offences on licensing premises.

Paragraph 11.18 says ‘Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.’ I add that for civil immigration policies to apply there must be a contract of employment which is not the norm in the catering/hospitality industry.

Paragraph 11.26 says ‘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; [our emphasis]**
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. '

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.'

Further, the Council's licensing policy has the following relevant paragraphs

- 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, 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 Doorstaff
- (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

If the Committee wishes to impose condition for the continuance of the 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. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation. We cannot therefore impose a condition regarding the undertaking of right to work checks – they are a legal requirement under the Immigration Acts

The Secretary of State's Guidance provides further assistance, and in paragraphs 10.8 and 10.10 it provides: -

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 considered all the material before us with care and we have heard from Mrs Powell and Mr Ashford on behalf of Essex Police, Immigration Officer Gear on behalf of the Home Office, and from Messrs Choudhury and Sharif. Their solicitor, Mr Harman, has also spoken on their behalf.

We have also listened to a number of members of the public, who I will not list, but in listening to them we have been mindful that Regulation 19(b) Licensing Act 2003

(Hearings) Regulations 2005 requires us to disregard information given by anyone that is not specifically relevant to the promotion of a licensing objective: what these people had to say was in the character of character referees only and we did not that they dealt only with Mr Choudhury. We therefore give what they said no weight. We have noted the history of the premises and observed that on his own admission in 2013 and again in 2014 the business was sanctioned. Similarly, another business operated by Messrs Choudhury and Sharif, the Pride of Sylhet, was sanctioned in 2011 for the same reason. There have been ample opportunities for lessons to be learned.

We have taken into account everything we have both read and heard and at this point 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.

A civil penalty of up to £20,000 can only be levied if there is a contract of employment: however, the use of the words “disqualified from that work” suggest the Guidance also covers those who under the employment protection legislation are referred to as “Limb B” workers.

This Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states

“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.” We respectfully adopt this. Furthermore, His Lordship then said “...the respondent exploited a vulnerable individual from his community by acting in plain,

albeit covert, breach of the criminal law. In my view his licence should be revoked". This case is on all fours with the one before us today, and in the light of the revised Guidance reinforcing the point, we agree with His Lordship's conclusion.

The evidence we have seen shows that the individuals concerned admitted working without the proper immigration checks having been undertaken, and furthermore, that one of them also admitted to working less than minimum wage, ie for board and lodging, which is also a breach of other employee rights legislation. Finally, we cannot overlook the fact that this is not a first offence: this is the fourth time immigration officers have visited the premises, we also take into account the incident at the Pride of Sylhet, and we also appreciate that an Illegal Working Civil Penalty may only be imposed if the existence of a contract of employment can be established.

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 Choudhury and Mr Sharif have 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 Zara Restaurant [2016] EWHC 1265* and are satisfied that even though on this occasion so far as we are aware Mr Choudhury 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 Choudhury engaged the 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 license remains in force. Mr Choudhury will receive a letter from the Legal Department explaining this.

DOCUMENT 6

DECISION NOTICE – QUEEN VICTORIA, STORTFORD ROAD, DUNMOW

The application before the Panel today is for the grant of a new premises licence of the Queen Victoria, Stortford Road, Dunmow.. The application is dated 26th September 2018 and is made by Aldbrook Limited

Representations have been made by Essex Police 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:-

- (a) Premises licence application (Appendix A)
- (b) Plan of premises (Appendix B)
- (c) Representation from Statutory consultee (Essex Police) (Appendix C)
- (d) Location map of premises (Appendix D)
- (e) A bundle of supplementary information from the Police including full set of the information held by Companies House in respect of the applicant company
- (f) Revised Guidance issued under section 182 of the Licensing Act 2003
- (g) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

We have also seen some documents submitted late by the applicant's agent Stuart Gibson regarding the share transfers. This includes P45s for the outgoing directors but we are mindful of the fact that there is no legal requirement whatsoever for a director to be an employee and so we give these very little weight.

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:

(J) Supply of Alcohol for consumption on the premises (on the premises)

Monday to Saturday	10am - 11pm
Sunday	10am - 10.30pm

(L) The opening hours of the premises

Monday to Saturday	10am – 11.30pm
Sunday	10am - 11pm

Copies of the application have been served on all of the statutory bodies, and has attracted representations from Essex Police based on the Crime and Disorder objective. Details of these representations can be seen at Appendix C and the supplementary documents and we have also heard from Mrs Powell and Mr Ashford from Essex Police. We also heard from Mr Gibson, the applicant's licensing agent and from Messrs Shawkat and Wazadur Chowdhury themselves.

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 options 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 most recent version is dated April 2018 and we are mindful of the contents thereof. It 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 [our emphasis];**
- 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 [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:

- (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 Mrs Powell, who presented the Police case supported by Mr Ashford.

We have also heard from Mr Gibson on behalf of the applicant company and from the two Messrs Chowdhury. Unfortunately, the latter have failed to convince us regarding a number of matters, and we are extremely concerned regarding whether or not the sale of this business is genuinely an arms length transaction between unconnected persons. On the balance of probabilities we believe that it is not.

The previous owner, Mr Ziaul Chowdhury, has tried to lobby some of our number. Why? The financial information before us makes no mention of the ownership of and payment of the outgoings upon the physical premises at Stortford Road. The person whom Mr S Chowdhury believes to be the landlord, a Mr Hussein from Turkey, is not the registered proprietor of the building and there is no note of any leasehold interests upon the title at HM Land Registry. Nobody undertakes works as substantial as the rethatching of a roof without having a secure legal interest in the property. A transfer of shares in a limited company that does not own its operating assets is not the transfer of a business and neither Mr S nor Mr W Chowdhury could give proper explanations for this failure. Nor do we believe that Mr W Chowdhury can

act as designated premises supervisor for two sets of premises AND work as a taxi driver, and we recall from the previous hearings before us that Mr Z Chowdhury mentioned his dedication of time and effort to a restaurant business in Sawston as being why he neglected certain aspects of the management of the Queen Victoria.

We have considered all the material before us very carefully indeed, including the documents put before us for the first time today, and we are mindful of the history of these premises vis a vis the licensing authority over the past six months. To recap, the applicant is Aldbrook Ltd and that company has at all material times operated a business from these premises trading as Jalsa Ghar. This company has employed the workers in this business and has accounted to HMRC for taxes. Aldbrook itself acquired the assets of its business from the liquidator of a company called Jalsa Ghar (UK) Ltd, also based at 79 Stortford Road, of which the outgoing licensees, Ziaul Choudhury and Omar Shorif, were shareholders. They became directors of Aldbrook between December 2011 and February 2012, while remaining as shareholders until Autumn 2018.

The share transfers of which we have heard today took place very shortly after the revocation of the previous licence. The transfer of shares in a company that does not own the operating assets of the business does not necessarily a sale of that business make, plus the P45s submitted in respect of the outgoing directors have no probative value whatever. A director does not have to be an employee and the fact that a person is now holder of shares does not mean they are the true beneficial owner of them. No prudent businessman would enter into a contract under which a further payment is due upon the occurrence of a contingency without that agreement being evidence in writing, and Aldbrook's financial statements make no mention of either a lease of the premises or payment of a substantive rent. In the light of all this, and the inability of Messrs Chowdhury to answer our questions, reinforces the feeling that this is not a true sale to bona fide purchasers for value at arms length..

Continuing, we note there was also a third director, Fazul Bari Chowdhury, who remained in post throughout and is recorded as being resident at the same address as Hadayouth Ahmed Chowdhury, who also figures in the history of these premises, see post.

Ziaul Choudhury held a 75% shareholding giving him significant control. On 19th September, again within the appeal period for the revocation of the licence, a 75% shareholding was acquired by Shawkat Karim Chowdhury, notification being given to Companies House in form PSC01 on 27th September. He has also been appointed a director.

Further searches carried out by the Police against SK Chowdhury at Companies House show that he is also a director of Comfort Transport (UK) Ltd. We have learned today that that company is a taxi firm licensed by TfL. That company's other director is Hadayouth Ahmed Chowdhury (see above) who unsuccessfully applied for a transfer of the premises licence to him on 21st August 2018 in the hope of forestalling the 11th September review. Mr H Chowdhury worked in the business in a management role at that time though we are told he has ceased to do so.

Similar directorship searches against Ziaul Choudhury revealed involvement with another company called Karhold Ltd: a co-director of this company was one Wazadur Chowdhury, who holds the premises licence for Kaz's Indian Restaurant, Sawston, which is the premises in Sawston referred to by Mr Z Chowdhury in evidence before us in September. The manner in which Mr W Chowdhury acquired that business from Mr Z Chowdhury is identical to the way in which this business has been transferred.

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; at all material times this business has been operated by closely connected persons. The corporate veil is being used to provide a structure whereby these associated persons may trade in common. We cannot ignore the history of the premises and observe that businesses operated by these people have on several occasions been sanctioned for immigration offences. There have been ample opportunities for lessons to be learned. We have no guarantee whatsoever that they will be, and furthermore an attempt has been made by Mr Z Chowdhury to lobby members of this Committee. This aspect of the matter has been referred to the Council's Monitoring Officer.

This only serves to reinforce the Police contentions, and Mr S Chowdhury did have to admit that there is indeed a verbal agreement for the payment of a further [REDACTED] to Mr Z Chowdhury if a licence is granted today. He further admitted that the business was worthless without a licence which to our minds poses yet further questions regarding the bona fides of this application.

I repeat, we have taken into account everything we have both read and heard and at this point 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.

This Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states

"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are

not required.” We respectfully adopt His Lordship’s conclusion albeit in the context of the grant of a new licence. The directors and shareholders of Aldbrook Ltd are not fit and proper people to hold a licence.

It is very clear that this closely linked group have traded collaboratively from these premises since before 2000. It is equally plain that they will continue to do so and that nothing has changed. 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. The Applicant will receive a letter from the Legal Department explaining this.

DECISION NOTICE – QUEEN VICTORIA, STORTFORD ROAD, DUNMOW

The application before the Panel today is for the grant of a new premises licence of the Queen Victoria, Stortford Road, Dunmow. The application is dated 31st May 2019 and is made by Fazlul Bari Choudhury, the intended DPS being one Hadayouth Ahmed Choudhury. Representations have been made by Essex Police 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:-

- (a) Premises licence application
- (b) Plan of premises
- (c) Representation from Statutory consultee (Essex Police) under the Crime and Disorder objective.
- (d) Location map of premises
- (e) A bundle of supplementary information from the Police including a full set of the information held by Companies House in respect of the applicant and the intended DPS, together with the notices issued upon previous determinations by this Committee

226 letters have also been received from local residents supporting the application. However, 221 of these are identical, the senders having simply completed their contact details and accordingly the weight these have been accorded is limited. We understand that they were drafted by the Applicant's solicitor and that they do not address the very serious issue of immigration crime, with which we are primarily concerned today. To all intents and purposes taken together these letters are a petition and we accord them the weight we would give a petition.

We have also seen the Home Office's most recently Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) and Uttlesford District Council's Statement of Licensing Act 2003 Policy 2017-22

By way of background, the Queen Victoria restaurant is situated on the outskirts of the town of Great Dunmow. A plan showing the location of the premises in the village is before us. A previous licence has been in place at these premises held by different persons (all of whom were connected in some way) which was revoked by the Licensing & Environmental Health Committee on 11 September 2018.

The previous licensees were, like the individual applicant today, directors of Aldbrook Limited, and scrutiny of the records held pertaining thereto at Companies House, copies of which have been provided by the Police, shows they resigned within 7 days of the licence revocation. There were concerns that the new directors were too closely connected with the former management to constitute a new business.

An application for a new premises licence was applied for in September 2018, and this application was refused by the Licensing and Environmental Health Committee on 19 November 2018. The Committee were satisfied that the Police had made out their objection, that that application did not relate to a whole new business: and at all material times the Queen Victoria has been operated by closely connected persons. It should be noted that the Hadayouth Ahmed Choudhury nominated as DPS in this application has previously been an applicant on one of those occasions and that the applicant himself has been a director of Aldbrook Limited.

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.

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

(J) Supply of Alcohol for consumption on the premises (on the premises)

Monday to Sunday 10:00 to 23:00

(L) The opening hours of the premises

Monday to Sunday 10:00 to 23:30

Copies of the application have been served on all of the statutory bodies, and has attracted representations from Essex Police based on the Crime and Disorder objective. Details of these representations and the supplementary documents submitted by the Police are before us and we have also heard from Gary Burke of the Police Licensing Department supported by Mrs Powell.

We also heard from Mr Dadds, the applicant's solicitor. We agreed to him speaking to the residents' letters: however, it was only too clear to us that this application was solicitor led and we do have concerns as to whether any improvements can be sustained when his guiding hand is removed. Mr Choudhury Jnr's recitation as to the right to work procedure to be followed gave every appearance of having been learned by rote and the Applicant barely spoke.

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

There is no hierarchy of importance and all must be given equal weight.

The options 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 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 that concerns the Police and they make no complaint about ordinary low level crime and/or ASB and nor does any other statutory consultee.

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 goes on to say

‘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 [our emphasis];**
- 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 [our emphasis].**

At this point we interpose that the Applicant proposes to require responsibility for right to work checks to rest with the DPS, subject to checking by the business’ accountants, Messrs T Ahmed of Harrow. This firm has been involved in the share transfers and so forth over the last couple of years that concern the Police so greatly, and we note that they are not a local firm. We are concerned at the adequacy of the oversight they can provide.

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 reiterate, we have heard from Mr Burke, who presented the Police case supported by Mrs Powell. We have also heard from Mr Dadds who addressed us at some length. Messrs Choudhury barely spoke at all. We note that this application has been submitted under his tutelage and that he has prepared all the documentation submitted on behalf of the Applicant, including the drafting of the standard letter of support signed by 221 people and forming the petition before us today. We note that these people have no concerns about the premises, that no other statutory consultee has appeared before us today and that the Police concede that there are no operational concerns regarding the premises: their concerns relate to immigration crime and we observe that this is a serious matter and does real harm to the individuals trafficked, many of whom are very vulnerable, and to society generally. A business using illegal workers does not pay tax, it does not offer good work, and it harms legitimate businesses by virtue of the fact that its costs are lower. Further, the people working illegally are often unable to access the basic necessities of life such as healthcare and housing, and in some cases the conditions under which they exist are nothing more than slavery.

WE still have concerns regarding the history of these premises. This is not a new business: the Applicant is a former partner in the Jalsa Ghar restaurant and was, and remains, a director of Aldbrook Ltd. He now apparently works full time in the business and so too, we understand, does his wife: the intended DPS is their son and we are concerned that he might not be able to resist parental pressure to cut corners. We understand exactly where the Police are coming from, and we appreciate and share their concerns.

However, as Mr Dadds has said, this is a new application and the applicants have been trained by him. We can but hope that that training will stick and that going forward the Police will keep an eye on these premises, and if there is any failure to adequately promote the licensing objectives, then the matter will come back before us. WE therefore grant the application: we now turn to the conditions upon which we grant it. A draft can be found at pp 29-30 of our document pack, prepared by Mr Dadds. Though they go some way towards satisfying our concerns, they do not go far enough. WE therefore propose the following additions and only set out those changes made by us.

1. Alcohol shall not be sold by any person who is not engaged to work under a contract of employment to work at the premises.
2. Before any person is employed at the premises in any capacity sufficient checks will be made of their bona fides to ensure they are legally entitled to employment in the UK. All documents will be retained for a period of 12 months post termination of employment and will be made available to the Police, Immigration and Licensing officers upon reasonable request, but in any event within 48 hours of the request. Such checks will include:-
 - Proof of identity (such as a copy of their passport)
 - Nationality
 - Current immigration status
 - Details of their full name and address
 - Date of birth

Responsibility for the said checks shall rest jointly and severally with the premises licence holder and the designated premises supervisor subject to oversight by the businesses accountants and/or HR consultancy details of which should be provided to the Licensing Authority

7. The premises licence holder shall ensure that all relevant staff shall receive induction training relating to the sale of alcohol and to the terms and conditions of the premises licence. The training shall be recorded, ongoing and made available to a relevant responsible Authority upon reasonable request, but in any event within 48 hours of the request.
8. The premises licence holder shall ensure that all training records shall be

retained for 12 months and made available to Police and local authority officers upon reasonable request but in any event within 48 hours of the request.

9. 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.

On this basis we grant the licence and trust we will not see the applicants before us again.

Appendix C.6

Timeline of significant events for Aldbrook Limited

Date	Event	Directors/significant persons at the time	Shareholders at the time (based on documents filed with Companies House)
2 November 2011	Incorporation of Aldbrook Limited	<ul style="list-style-type: none"> • Arthur Barber 	
16 December 2011	Change of directors	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam (secretary) • Shorif, Omar • Chowdhury, Mahsana 	
15 February 2012	Resignation of Z Chowdhury, O Shorif and F Chowdhury as directors from Aldbrook Limited	<ul style="list-style-type: none"> • Chowdhury, Mahsana 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
05 March 2012	Liquidation of Jalsa Ghar (UK) Limited – due to low turnover and HMRC debts	<ul style="list-style-type: none"> • Chowdhury, Mahsana 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
08 March 2012	Purchase of Jalsa Ghar (UK) Limited assets by Aldbrook Limited	<ul style="list-style-type: none"> • Chowdhury, Mahsana 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar

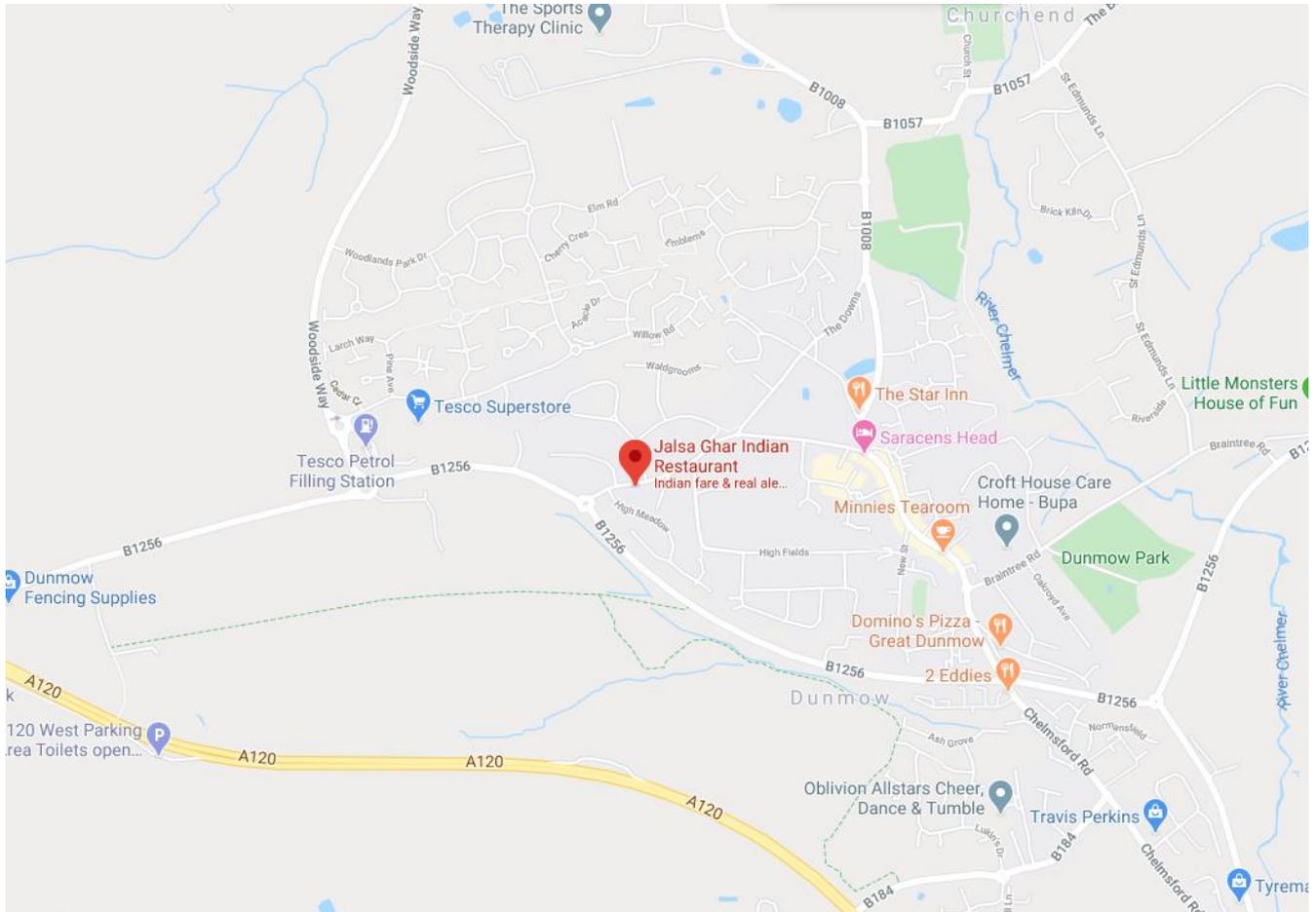
11 October 2013	Change of directors of Aldbrook Limited from M Chowdhury to F Chowdhury	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
05 December 2013	8 Illegal workers found during raid	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
July 2014	4 Illegal workers found during raid	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Ziaul Islam • Shorif, Omar
August 2016	3 Illegal workers found during raid	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari – 75%+ • Shorif, Omar – 25-50%
06 July 2018	4 Illegal workers found during raid– Aldbrook Limited liable for penalty	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
12 July 2018	Application to transfer premises licence to H Chowdhury and MDA Chowdhury – refused	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
21 August 2018	Application for DPS variation to H Chowdhury – refused	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
21 August 2018	Hearing for DPS variation - refused	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
11 September 2018	Hearing for review of Premises Licence – licence revoked	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar

19/20 September 2018	Addition of S Chowdhury and W Chowdhury as directors of Aldbrook Limited	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim (remaining 25%+ not mentioned on companies house)
27 September 2018	Resignation of F Choudhury as director of Aldbrook Limited	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim (remaining 25%+ not mentioned on companies house)
26 September 2018	New Grant premises licence application for Aldbrook Limited – refused	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim (remaining 25%+ not mentioned on companies house)
19 November 2018	Hearing for above new grant - refused	<ul style="list-style-type: none"> • Chowdhury, Shawkat Karim • Chowdhury, Wazadur Rob 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari Shorif, Omar
23 November 2018	Change in directors from S Chowdhury and W Chowdhury to F Chowdhury and O Shorif for Aldbrook Limited	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari • Shorif, Omar
05 February 2019	Resignation of O Shorif as director of Aldbrook Limited	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari
14 May 2019	Transfer of 100% shares in Aldbrook Ltd to F Choudhury	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari
31 May 2019	Application to transfer premises licence to F Choudhury and DPS to H Choudhury	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari 	<ul style="list-style-type: none"> • Choudhury, Fazlul Bari

Date of annual return	Allocation of shares (Aldbrook Ltd)
02 November 2012	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2013	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2014	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2015	Choudhury, Fazlul Bari – 500 Chowdhury, Ziaul Islam – 300 Shorif, Omar – 400
02 November 2016	Choudhury, Fazlul Bari – 75%+ Shorif, Omar – 25-50%
19 September 2018	Chowdhury, Shawkat Karim – 75%+ (remaining 25%+ not mentioned on companies house)
02 November 2018	Choudhury, Fazlul Bari – 800 Chowdhury, Ziaul Islam – 0 (300 transferred to Fazlul 25/10/18) Shorif, Omar – 400
23 November 2018	Choudhury, Fazlul Bari – 1200 Shorif, Omar – 0 (400 transferred to Fazlul 23/11/18)

Appendix D

Queen Victoria (also known as Jalsa Ghar Indian Restaurant)



Louise Bailey

From: David Dadds on behalf of Louise Bailey
Sent: 03 April 2020 12:56
To: Licensing Braintree and Uttlesford
Cc: Licensing Applications Essex
Subject: RE: Application Received - Variation of Premises Licence Queen Victoria Stortford road

Dear Vicky

We have received your representation to the variation application and would like to clarify some points which have been incorrectly stated in your letter of representation.

Mr Fazlul Bari Choudhury is the premises licence holder and the owner of this business and he runs this family business with his son, Hadayouth Ahmed Choudhury.

There have been previous visits by immigration and a hearing on Thursday 25th July 2019 whereby a premises licence was granted with conditions to satisfy ongoing concerns regarding the promotion of the licensing objectives going forward. Since this grant, Mr Fazlul Choudhury has been complying with the required checks and conditions of the licence and running the business responsibly and honestly. This has, in effect drawn a line under the previous management of the restaurant and started afresh.

Mr Choudhury very much refutes the statement from Essex Police which says his intention is in no way honourable. He is an honourable man running a business during difficult and unprecedented economic times. Mr Ziaul Islam Chowdhury is the Nephew of Mr Fazlul Bari Choudhury and has nothing currently to do with the restaurant, - he is in fact working full time at the airport and is continuing with this employment. To say that this is a belligerent attempt to reinstate the business as it was, is completely incorrect and not accepted.

The application was NOT to give him ANY capacity to act as management or be involved with the running of the business; he is family and, during these unprecedented circumstances, would like to help merely work in the business to assist the family when they are going through difficulties. The application was to:

1. Remove condition 5 Annexe 3 of the premises licence – namely; 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.
2. Add conditions to the premises licence – namely;
 - (i) **Mr Ziaul Islam Choudhury and Mr Omar Shorif will be excluded from any involvement in the ownership and management of the business and;**
 - (ii) Mr Omar Shorif will be excluded from the premises.

(still excluded from management and ownership – just now to be allowed on the premises)

This clearly shows that the management structure is not as Essex Police infers and Mr Ziaul Islam Chowdhury will NOT be taking a more overt management role. He is just asking to be allowed to be on the premises.

All businesses are severely struggling in this current climate and this is no exception, but to keep the operation running, is a family priority. If this condition change were to be time limited, to say 12 months, in order to help this business work through this austere period, the applicant is happy to accept this amendment and revert to the previous licence after the time limitation.

Once you have read this response, we would very much welcome a call to discuss this matter and if we are able to come to an agreement to let this local business continue to exist and thrive in the future and not be another victim of the coronavirus, that can surely only be a good thing.

We look forward to hearing from you.

Best regards

Dadds LLP – 01277 631811 / 07798 552371

Dadds LLP Licensing Solicitors

Crescent House, 51 High St, Billericay, Essex CM12 9AX

T 01277 631 811 F 01277 631 055 DX 32202 BILLERICAY

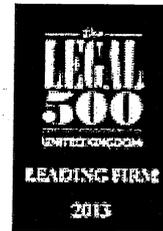
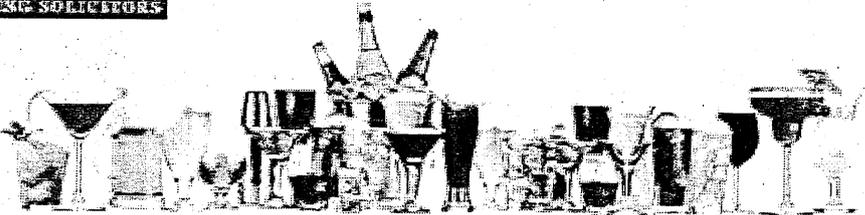
E david.dadds@dadds.co.uk

W www.dadds.co.uk

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All aspects of licensing law



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Louise Bailey

From: Licensing Braintree and Uttlesford
<Licensing.Braintree.and.Uttlesford@essex.police.uk>
Sent: 09 April 2020 09:32
To: Louise Bailey
Cc: Licensing Applications Essex
Subject: RE: Application Received - Variation of Premises Licence Queen Victoria Stortford road

Dear Louise,

Many thanks for your email. Essex Police response to the application remains the same and there will be opportunity to raise these points at the sub-committee hearing.

Kind regards
Vicky

*Licensing Officer 72551 Vicky Powell
Braintree & Uttlesford District Policing Area
North Local Policing Area
Phone 01245 452035 or Ext 420176
Mobile 07973 881 210 (answered during working hours only)
Email: vicky.powell@essex.pnn.police.uk*

Braintree Police Station Blyths Meadow Braintree CM73DJ

