

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.