

Appendix C.5

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licence has been in place at these premises held by different persons (all of whom were connected in some way) which was revoked by the Licensing & Environmental Health Committee on 11 September 2018.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.

