

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.

