LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, ESSEX CB11 4ER, on TUESDAY, 1 OCTOBER 2019 at 9.00 am

Present: Councillor P Lavelle (Chair)
Councillors D Eke, R Freeman and L Pepper.

Officers in Attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic Services Officer), E Smith (Solicitor) and A Turner (Licensing Team Leader).

Also Present: G Burke and R Saville (Essex Police);
D Logue (Interested party - neighbour to the premises).

LIC29 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

The Chair opened the meeting but the applicant had not arrived. He adjourned the meeting for 15 minutes to give the applicant an opportunity to be present at the start of the meeting.

The Enforcement Officer was asked to check reception and the foyer to ascertain whether the applicant had arrived. On his return he confirmed that neither the applicant nor the applicant's solicitor had arrived.

The Chair reconvened the meeting at 9.15am. He welcomed those present and introductions were made.

No apologies for absence were received.

The Chair sought the legal advice of the Solicitor in the absence of both the applicant and his solicitor.

The Solicitor asked the Enforcement Officer to check the entrance of the building and at reception to ensure the applicant had not arrived.

The Enforcement Officer left the room at 9.18am. He returned at 9.21am and confirmed neither the applicant nor the solicitor had arrived.

The Solicitor said this matter had already been adjourned and in the interests of natural justice, and for those relevant parties involved, it was only right that an independent hearing took place within a reasonable timeframe. The applicant and his solicitor had been served the correct notice of the hearing, and had been aware since 11 September 2019 that the hearing would be taking place on 1 October even though the applicant's solicitor was unavailable. This had given the applicant and his legal firm ample opportunity to arrange an alternative legal representative. The applicant's solicitor had been asked twice to provide case law on the right to a specific legal representative. He had failed to provide such case law. She advised the Panel that two courses of action were open to them;

to defer the hearing, or to proceed in the applicant's absence. The appellate process for the latter was explained to the Panel.

At 9.26am the meeting was adjourned to allow the Panel to deliberate.

At 9.49am the meeting was reconvened and the Chair read the Panel's decision.

DECISION NOTICE –INDIA VILLA, 20 WATLING STREET, THAXTED

The applications before the Panel today are for 1) a transfer of the premises licence of the India Villa restaurant, Watling Street, Thaxted, and 2) a review at the behest of Essex Police. There is reason to believe that the transfer application dated 17th August 2019 (which is opposed by Essex Police as the responsible authority) is an attempt to prevent the review application going ahead.

Mr Burke and Ms Savill of Essex Police are in attendance today, as is Mr Logue, a neighbouring resident. There is no appearance by anyone from or on behalf of India Villa though we are satisfied that they have been personally served with the paperwork in this matter and their legal representative, Mr Sutherland of Keystone Law, was told as long ago as 11th September that the hearing today would not be deferred to fit around his other commitments, see post.

We have listened to the advice tendered to us by our solicitor, Mrs Smith, regarding the potential consequences of proceeding in absentia and we have also had sight of the correspondence between Mrs Smith, the Licensing Department and Keystone Law. I have been consulted in my role as Chair of the Licensing and Environmental Health Committee and I agreed with officers that there had been ample opportunity for an advocate alternative to Mr Sutherland to be retained and instructed. Mrs Smith has formally advised us this morning that though both the common law and the Human Rights Act do give the citizen the right to a timeous and impartial hearing, and to independent legal representation at that hearing, neither give the right to representation by the individual advocate of choice and no authority has been cited to the Council suggesting that there is such a right. We are aware that the independent Bar can and do accept instructions upon very short notice and since September 11th there has been ample opportunity to retain and brief on of its members.

We are mindful that the Police and Mr Logue have attended before us today and that the latter has concerns above and beyond those of the Police. It is not reasonable to expect local residents including Mr Logue to have to continue to accept behaviour of the kind of which he complains. We are also mindful that India Villa have rights of appeal against any decision we make today and that other avenues of challenge to our decision are open to them. We also have had it explained to us, in the presence of the Police and Mr Logue, that the exercise of those rights will keep the licence alive until the conclusion of the appellate process: we can do nothing about this and appreciate that this will not help local residents.

WE have balanced the interests of India Villa against those of neighbouring residents and of the interest of the public generally in the prevention of illegal working, and consider, unanimously, that we should proceed to hear the applications today. We are satisfied that India Villa are aware of the hearing date and given that they have a right of appeal we consider it is in the public interest that we proceed to hear these two applications today.

At 9.52am the Enforcement Officer left the room to check whether the applicant had arrived at reception. He returned at 9.55am and confirmed that the applicant had not arrived.

LIC30 APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE - INDIA VILLA THAXTED

The Chair invited the Licensing Team Leader to present the report.

The report set out the details of the India Villa's application for the transfer of a premises licence, which had received an objection on 28 August 2019 from Essex Police under the Crime and Disorder licensing objective. The Police had set out their reasons for objecting to the transfer at Appendix B to the report, as on 21 June 2019 four persons were arrested for immigration offences who were working at the India Villa. The Police report stated that there were clear links between the existing and proposed Premises Licence Holder and suggested that a continuation of illegal working practices would continue if the licence was transferred.

In response to a question from the Solicitor, Mr Logue said he had read the papers and supported the Police's objection to the transfer.

Mr Burke was invited to present the Police's report to the Panel.

Mr Burke summarised the Police report. He reiterated that four persons working at the India Villa had been arrested on 21 June 2019 for immigration offences. It had not been the first time illegal workers had been found at the India Villa as on 14 June 2017 two illegal workers had been found on the premises. He added that the transfer was a 'paper exercise' and the Police believed that the existing and proposed licensee were connected. Thus, current management would continue to run the business in a manner that ignored the Immigration Act and breached the prevention of Crime and Disorder licensing objective.

In response to a member question, Mr Burke confirmed that Surma Villa Ltd was a single share company that had been transferred from a Mr Hussain to a Mr Hussain. He confirmed that they resided at the same address, although were of different age.

At the invitation of the Chair, Mr Logue said he had witnessed a "seamless transition" since the company had been transferred. He said the previous manager, Mr Hussain, was at the restaurant on a daily basis.

At 10am the Panel retired to deliberate.

At 10.15am the Panel reconvened and the Chair read the Decision Notice.

DECISION NOTICE –INDIA VILLA, 20 WATLING STREET, THAXTED (2)

The application before the Panel today is for a transfer of the premises licence of the India Villa restaurant, Watling Street, Thaxted. The application is dated 17th August 2019 and is opposed by Essex Police as the responsible authority, pursuant to the crime and disorder licensing objective.

We have a report before us and have considered the Licensing Act 2003, 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. We also have before us a copy of the transfer application and of the Police objection, and note that the Applicant, 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 ("the Regulations"). Information to accompany the notice of hearing was also provided in accordance with "the Regulations", and if we refuse the application today then the situation reverts to the pre 17th August 2019 status quo as though the application had never been made.
By way of background, the India Villa restaurant licence has something of a chequered history. Today, we are here to consider the Police objection to the application for the transfer of the premises licence, and decide whether to:

(a) Grant the application for the transfer of the premises licence from Ashik Miah to Surma Villa Ltd or
(b) Reject the application for the transfer of the premises licence to Surma Villa Ltd if appropriate to do so in order to promote the crime prevention objective.

We remind ourselves that in carrying out our statutory function, we must promote 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.

An application for the transfer of an existing premises licence under Section 42 of the Act is normally a straightforward procedure and is dealt with administratively under delegated authority. Notice of the application needs to be served on the Police and also the Home Office if alcohol and/ or late-night refreshment are involved.

Under Section 42 (6) of the Act, however, 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 then he must serve notice of this objection upon the Licensing Authority within fourteen days of receiving the application. When such an objection is received from the Police the matter must be referred to the Licensing and Environmental Health Committee for a hearing to determine the application. Such is the position in this case.

An application to transfer a premises licence under the Licensing Act 2003 was received by Uttlesford District Council ("the Licensing Authority") from Surma Villa Ltd on 22 August 2019 (Appendix 1). Surma Villa Ltd has applied to transfer the premises licence into its name from the current licence holder, Mr Ashik Miah. Records show that Premises Licence no PL0406 was granted to Mr Miah on 25 May 2018. In this case the request was for the transfer to have immediate effect and it was administered by the Licensing Authority accordingly. Section 43 of the Act allows the premises licence to have effect during the "application period" as if the applicant were already the holder of the licence. This began 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. If a decision is made to appeal a determination, then the "application period" continues until the determination by that court.

On 28 August 2019 the Licensing Authority received a notice of objection under Section 42 (6) of the Act from Essex Police including a detailed statement of their reasons for objecting (Appendix 2). These reasons were considered by the Licensing Team Leader to be a valid objection under the Act, and therefore the matter was placed before us to determine the application under Section 44 (5) of the Act.

To recap, the decisions available to the Committee in respect of this application are to

(a) grant the transfer of this premises licence to Surma Villa Ltd or

(b) to reject the application for the transfer of the premises licence to Surma Villa Ltd if it considers it appropriate to do so for the promotion of the crime prevention objective.

Whatever option is decided upon, clear reasons should be given for the decision.

The premises are already the subject of a review application, which is due to be determined by the Licensing and Environmental Committee on 1 October 2019. The review application was made by the Police on the grounds of crime and disorder relating to immigration offences.

Paragraph 8.101 of the Secretary of State's Guidance states that objections to transfers are expected to be rare and arise because the police or the Home Office have evidence that the business or individuals are involved in crime, in this case the employment of illegal workers.
The applicant has not attended before us today but we are satisfied that they have had proper notice of this hearing and indeed were personally served by the

Enforcement Officer, at a date giving them ample opportunity to make any necessary arrangements. WE have however, heard from Mr Burke on behalf of Essex Police, who was supported by Mr Logue, a neighbouring resident. WE have read all the papers before us and have been told today by both Mr Logue and by the Enforcement Officer that Mr A Hussain remains in day to day control of the premises. The only thing that has actually been transferred is one £1.00 share in a limited company, and we note from the Companies House documentation provided by the Police that both transferor and transferee reside at the same address. This is not a new business, much less an unconnected applicant and we do not believe that anything will change.
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. I make no apology for doing so. 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.

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."

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, supported by Mr Logue have made out their case and that the application for the transfer of the premises licence should be refused. The licence therefore reverts to its previous holder Mr Miah with immediate effect.

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. Everyone before us will receive a letter from the Legal Department enclosing a copy of this decision notice and explaining their rights of appeal.

LIC31 APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - INDIA VILLA THAXTED

The Chair adjourned the meeting at 10.20am.

The meeting reconvened at 10.30am.

At the invitation of the Chair, the Licensing Team Leader presented the report outlining the review of India Villa's premises licence. She said Essex Police had sought a revocation of this premises licence based on the prevention of Crime

and Disorder licensing objective, as persons had been found working illegally on the premises.

Mr Burke was invited to present the Police's report to the Panel.

Mr Burke said on 21 June 2019 police officers had attended India Villa in relation to a report of harassment regarding a man who was known to work at the restaurant. On inspection, officers requested details of the five members of staff working at the location; only one of the five could supply identification. In all, four men were identified as immigration offenders and detained.

Three videos of the bodycam footage of the police's inspection of India Villa were shown to the Panel. Two Police Officers were present and are shown to be questioning Mr Hussain regarding a harassment enquiry. The Officers are then shown around the premises, including an upstairs room with seven single beds that appeared to have been slept in. The Officers proceed to ask for the five members of staff working at the restaurant to present their ID. Only one of the five men presents identification. One man ignores the Officer's request to remain in a designated area and flees upstairs. The Officer follows the man upstairs but cannot ascertain his whereabouts. It appears that the man has absconded from the upstairs window.

Mr Burke informed members that the man who fled the building was later detained by officers nearby. He would also be charged with immigration offences.

In response to a Member question regarding the seven beds that appeared to have been slept in, the Solicitor confirmed that Environmental Health were aware of the health and safety issues at the premises and would be following up.

In response to a question from the Chair, Mr Burke said Mr Hussain had been arrested and his apparent obstruction of justice was part of the ongoing investigation.

In response to a question from the Chair relating to the workers' pay, Mr Burke said one individual detained had confirmed that he was paid less than the minimum wage.

In response to a question from the Chair relating to the Designated Premises Supervisor, Mr Miah, the Licensing Team Leader confirmed that there had been no interaction with the appointed DPS.

In response to a question from the Chair, Mr Burke said only one right to work check dating back to January 2018 was found during the search. He confirmed that not one of the four men detained for immigration offences could provide identification.

Mr Logue was invited to comment on the review. As a neighbour to the premises he feared for his family's safety and highlighted the example of the man who absconded from the upstairs window and jumped over Mr Logue's fence and escaped through his garden. Furthermore, each night his family were woken by

disturbances from the premises and he had witnessed violence outside involving employees of the India Villa. This had disturbed and traumatised his young family. He said Mr Hussein was no longer helpful as he believed Mr Logue had reported him to the Police. Mr Logue said he had no involvement in the matter. He added that the neighbour on the other side of the property had also reported anti-social behaviour.

At 11.05am the Panel retired to make their decision.

The Panel returned at 11.50am and the Chair read the decision.

DECISION NOTICE – INDIA VILLA, 20 WATLING STREET, THAXTED

The application before the Panel today is for the review of the premises licence of the India Villa restaurant, Watling Street, Thaxted. The application is dated 28th June 2019 and is at the behest of Essex Police as a responsible authority, pursuant to the crime and disorder licensing objective. We have already refused a tactical application for the transfer of the licence, made in the hope that thereby this application could be forestalled.

We have had sight of a detailed report and have considered the extensive background papers, including:-

(a) Premises licence
(b) Plan of premises
(c) Review application documentation from Essex Police under the Crime and Disorder objective.
(d) Letter from a neighbouring resident (Mr Logue)

We have also had sight of the Licensing Act 2003, 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. Further, 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 its 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*)

By way of background, the India Villa restaurant is situated on the main road going through Thaxted, opposite the church. A plan showing its location is before us, and historically, the original application for a premises licence was granted on 18 November 2005. No representations were made in respect of the application and it was granted as applied for; there was no previous Justices' licence.

In June 2017 there was an application to change the Designated Premises Supervisor (DPS). The Licensing Authority received a letter from the Police objecting to the proposed candidate, and at the commencement of the hearing on 31 July 2017 the application was withdrawn. At the same time, the Licensing Authority had also received an application for the review of the premises licence from Essex Police on the 5 July 2017 on the grounds of the prevention of crime and disorder. A hearing was scheduled to take place on 23 August 2017 but the licence was surrendered on 22 August 2017, and the review hearing did not take place.

A new premises licence was applied for in September 2018. No objections were received to this application so it was granted under delegated powers on 13 October 2018, and details of this licence (along with its hours and activities) are set out in our papers. The Council received the application before us on the 28 June 2019 on the grounds of the prevention of crime and disorder. The review application submitted by Essex Police is before us, including witness statements made under S9 Criminal Justice Act and other evidence: it is made pursuant to the crime and disorder objective, the reason being that police officers discovered disqualified persons working illegally on the premises.

The statutory crime and 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.

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.

Following receipt of the Police application, procedurally a Notice of Review was issued by Uttlesford District Council's Licensing Department and served by the Council's Licensing Enforcement Officer on 1 July 2019.The Notice was displayed in the front window of the premises and details of the review have been advertised on the Council's website. The Notice advised of the grounds for the review and requested representations should be made between 29 June and 26 July 2019 to Uttlesford District Council in writing. All Statutory consultees were served a copy of the review application on 1 July 2019. No additional comments/representations were received from other statutory consultees during the 28 day consultation period, but one representation has been received during the 28 day consultation period from Mr Logue under the crime and disorder objective. This letter is before us and identifies ongoing alleged public nuisance concerns, both criminal and in terms of antisocial behaviour
The options that are available to this Committee 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.

We are advised that when carrying out a review of a licence, due regard should be given to the Licensing Act 2003 as amended and Regulations made thereunder, the Council's Licensing Policy and the Home Office Guidance issued under Section 182 of the Licensing Act 2003.The most recent edition of this guidance issued in April 2018 includes new provisions in respect of immigration issues.

We quote these as follows:-

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 goes on to highlight 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, while *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.'

The following paragraphs of the Guidance deal specifically with reviews of the premises licence, where crime and disorder is an issue. They highlight the seriousness with which the Secretary of State expects licensing authorities to treat immigration offences on licensing premises. Again, we quote:-

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.'

Paragraph 11.26 further 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 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. '

Paragraph 11.28 provides that '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.'

Moving on, the Council's Licensing Policy (which may be found on our website) contains 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 [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, 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

We are advised that if the Committee in its decision wishes to impose additional conditions, which is an option open to us among those listed earlier, the only conditions that we can impose are those that are necessary and proportionate to promote the licensing objective relative to the representations received. They must not duplicate the effect of existing legislation.

The Home Office Guidance provides further assistance to us in paragraph 10.8 and 10.10 thereof, when it states that a 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.

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 understand that the 2018 Guidance is the first edition to **specifically** include 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 repeats and reinforces the position at common law, and we have been referred to 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 have read all the papers before us, and we have seen bodycam footage provided by the Police. We have also heard oral representations from Mr Burke on behalf of the Police and from Mr Logue, a neighbouring resident. Neither the premises licensee, the DPS or the transfer applicants have attended before us today, and since the transfer application was refused this morning the relevant parties are once more India Villa Thaxted Ltd and Ashik Miah. WE are satisfied that all involved were aware of the hearing before us and taking into account the interests of others involved and of the wider public interest we deemed it

appropriate to proceed after deferring the start of the hearing to take account of traffic.

We have heard a great deal about the operation of these premises this morning, and note that there are a considerable number of matters not within the purview of the Licensing Authority. We understand from Mr Burke that a number of investigations by both Essex Police and UKBA are ongoing and we are informed that the Council's Environmental Health teams are investigating a number of other matters: yet further matters are within the purview of yet other authorities and we trust that the Police are in contact with them.

We are mindful of the four licensing objectives and consider that three of them have been breached: crime and disorder, public safety and public nuisance. Mr Logue has raised matters with us additional to those raised by the Police and we are concerned at the behaviour to which local residents are subjected; this includes issues arising from the multiple occupancy of the upper rooms in the India Villa building and the bodycam footage we have seen shows the disgraceful conditions in which these unfortunate people lived.

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. I make no apology for doing so. 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. Illegal working cause nothing but harm to society – those operating unlawfully do not pay taxes and levies that legitimate operations must, putting them at an unfair competitive advantage, it deprives people here legally of the opportunity to secure employment, and for those brought here to work in such conditions, it deprives them of access to proper housing, healthcare and leaves them working in conditions amounting to slavery. Only the traffickers and those engaging illegal labour benefit from this wrong and this is unacceptable.

Again, without apologising for the repetition, the 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 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 India Villa, Mr Miah and the Hussein family have all failed to prevent 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 the licensing objective is engaged. The evidence we have heard in its entirety shows that two other licensing objectives, namely public safety and public nuisance, are similarly engaged and we take note of this.

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 unfortunate people referred to in the Police submissions were engaged to work unlawfully in this country. Sadly, their behaviour of itself constitutes a breach of the licensing objectives and it causes great distress to neighbouring residents.

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. We also, though we accept the revocation renders his role redundant, direct that Mr Miah cease to be DPS and record our view that he is not a fit and proper person to hold such a serious responsibility: as Chair of this Panel I will be writing to my counterpart at Enfield LBC, the authority issuing his personal licence, with our concerns regarding his suitability.

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. Everyone will receive letters from the Legal Department explaining this.

The meeting ended at 12.00pm.