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LICENSING SUB-COMMITTEE

MINUTES OF THE MEETING HELD ON TUESDAY, 23 OCTOBER 2018

Councillors Present: Peter Argyle, Graham Bridgman, James Cole (Chairman) and Quentin Webb

Substitute:

Also Present: Anne Marie Baird (Solicitor) and Emilia Matheou (Environmental Health & Licensing), Jo Watt (Member Services Officer)

PARTI

3 Declarations of Interest

There were no declarations of interest received.

4 Application No. 18/01230/LQN - Miah's of Pangbourne, 26 Reading Road, Pangbourne, RG8 7LY

The Sub-Committee considered a report (Agenda Item 2(1)) concerning Licensing Application 18/01230/LQN in respect of the review of Premises Licence number 014279 – Miah's of Pangbourne, 26 Reading Road, Pangbourne, RG8 7LY.

In accordance with the Council's Constitution, Ms Emilia Matheou (Licensing Officer, West Berkshire Council), Ms Lee-Ann Evanson (Applicant, Home Office Immigration Enforcement Officer), PC Simon Wheeler (Responsible Authority, Thames Valley Police), Councillor Pamela Bale (Ward Member) Mr Jamshed Miah (Premise Licence Holder) and Mr Rameez Dar (Solicitor representing the Premise Licence Holder) addressed the Sub-Committee on this application.

Ms Matheou, in addressing the Sub-Committee, raised the following points:

- In accordance with Section 51 of the Licensing Act 2003 and the West Berkshire Council Licensing Policy, the Sub-Committee was asked to consider and determine an application from Home Office Immigration Enforcement to review the premises licence 014729 for Miah's of Pangbourne.
- In accordance with Section 52 of the Licensing Act 2003, the Sub-Committee was asked to determine the application and having had regard to the application and any relevant representations take such steps as it considered appropriate for the promotion of the licensing objectives which were:
 - 1. The prevention of crime and disorder
 - 2. Public Safety
 - 3. The prevention of public nuisance
 - 4. The protection of children from harm
- The Sub-Committee had a number of options open to them in their determination. The options were:
 - 1. Modify the conditions of the licence

- 2. Exclude a licensable activity from the scope of the licence (for a period not exceeding three months or permanently)
- 3. Remove the Designated Premises Supervisor (DPS)
- 4. Suspend the licence for a period not exceeding three months
- Revoke the licence
- 6. Issue formal warnings to the DPS and/or premises licence holder
- 7. Take no action
- The Immigration Act 2015 amended Section 13(4) of the Licensing Act 2003 to include the Home Office, Immigration Enforcement as a responsible authority.
- On 30th August 2018 the Home Office Immigration Enforcement made an application under section 51 of the Licensing Act 2003 for a review of the premises licence in force at Miah's of Pangbourne.
- The grounds given by the Home Office for the review were that they believed the licence holder had undermined the licensing objective of 'The prevention of crime and disorder' as illegal working had been identified at the premises during an enforcement visit on 26th June 2018.
- Following receipt of the application to review the licence, the 28 day consultation period ran from 31st August 2018 to 27th September 2018. During this period, blue notices advertising the application to review were displayed at the premises and the Council Offices.
- During the consultation period, one representation in support of the application to review the licence was received from Thames Valley Police.
- On 3rd September 2018, Home Office Immigration Enforcement provided an additional statement to support their application to review the licence (page 22/23 of the agenda).
- On 25th September 2018, Chatham Chambers Solicitors wrote to advise that they
 had been instructed by Mr Jamshed Miah and to request an extension or
 adjournment to the hearing. In response to this request, Home Office Immigration
 Enforcement officers responded that in their view the hearing should still take place.
 This view was endorsed by West Berkshire Council Legal Advisors.
- On 8th October 2018 an application was made for a transfer of the premises licence to Mouadjul Mohammed Miah to which Thames Valley Police objected. On the same day an application was made to vary the licence to change the DPS to Mouadjul Mohammed Miah.

Questions from the Sub-Committee

Councillor Quentin Webb asked why the existing licence (014279) allowed for the playing of recorded music until 1.00 am if the opening hours of the restaurant were only until 00:30.

In response, Ms Matheou stated that she was unsure of the reason for the disparity but she would look into the matter further.

In response to a question from Councillor Graham Bridgman, Ms Matheou and the Premises Licence Holder Mr Jamshed Miah confirmed that it was Mr Jamshed Miah's son (Mr Mouadjul Mohammed Miah) whom it was proposed the licence should be transferred to. Mr Mouadjul Mohammed Miah confirmed he was in attendance at the meeting but he did not take part in the Sub-Committee proceedings.

Ms Lee-Ann Evanson, the Applicant representing Home Office Immigration Enforcement, in addressing the Sub-Committee, raised the following points:

- Following a change to legislation in 2016, the Home Office had been added to the list of Responsible Authorities in the licensing regime. Home Office Immigration Enforcement who had applied for the licence review was specifically concerned with those people who were living and working in the United Kingdom illegally.
- Home Office Immigration Enforcement had applied for the review as they had grounds to believe the Premises Licence Holder (Mr Jamshed Miah) would undermine the Licensing Objective of 'The Prevention of Crime and Disorder' as illegal working had been found at the premises during an enforcement visit made on 26th June 2018.
- The visit to Miah's of Pangbourne on 26th June 2018 was the second of three visits to restaurants operated by Mr Jamshed Miah and Fakrul Islam. The other two being in Reading (Miah's Garden of Gulab) and Spencers Wood (Miah's Spencers Wood). A total of 12 immigration offenders had been found to be working illegally across the three premises and Jamshed Miah was the Premises Licence Holder for all three premises.
- On 26th June 2018, a team of 8 Home Office Officers attended Miah's of Pangbourne entering under Section 179 of the Licensing Act 2003 (as amended by the Immigration Act 2016) at 19:03. The restaurant was open at this time and several customers were in the dining area.
- A total of 7 staff were encountered, 4 of whom were found to be working legally and cleared. The remaining 3 were males from Bangladesh, all of whom were found to be immigration offenders with no right to work in the UK.
- The first man was a 47 year old illegal entrant who was arrested and detained. This man was cooking food in the kitchen when the team entered the premises. He stated that he had been asked if he had any right to work paperwork but had not produced anything. He said it was only his second day working there and he had not been paid but he did receive food three times a day and stayed in a room above the restaurant for free.
- The second man who was found to be working illegally was a 39 year old overstayer who was arrested and detained. The man was dressed smartly and was carrying a tray of food from the kitchen towards the dining area. When questioned, the man said he was not working at the premises but was visiting his Uncle (Mr Jamshed Miah). The man later admitted to staying for two nights in the accommodation above the restaurant but said he had not been paid.
- The third man was a 32 year old overstayer who was working behind the bar. He was arrested before subsequently being asked to leave the premises as he did not have permission to work. He said that he had called the restaurant asking for work and had worked at the premises as front of house since 11th June 2018. He stated that he had been asked for his paperwork but had not produced it and admitted he did not have permission to work in the UK. He said he had not been paid for his work but received a room and free food.
- During the visit, the manager had arrived at the premises and had said that he
 was in charge of employing staff and knew males 1 and 2. The manager had gone
 on to say that male 1 had been working in the kitchen for 2 or 3 weeks and helped
 out in the kitchen. The manager said that male 2 was a family member and was
 just visiting.

- An illegal working civil penalty referral notice was served on the company with three males named, meaning a potential fine of up to £60,000.
- Ms Evanson asked the Sub-Committee to note the effects that illegal working could have including encouraging people to take risks, exploitation and a negative impact on pay.
- Given the evidence of illegal working that had been presented and the general poor management of the Premises Licence Holder, Ms Evanson said the desired outcome of the Home Office was that the existing licence (014279) be revoked.

Questions from the Sub-Committee

In response to a question from Councillor Graham Bridgman, Ms Evanson said that she did not have the name of the male who identified himself as the restaurant manager on the visit conducted on 26th June 2018.

In response to a further question from Councillor Bridgman, Ms Evanson said that the Home Office had not been present when PC Simon Wheeler had visited the premises on 16th September 2018 and she could not comment on PC Wheeler's statement that a further two members of staff were working on the premises with no right to work documentation.

Councillor Bridgman asked if the Home Office had applied to revoke the licenses of the other two Miah restaurants (Reading and Spencers Wood). Ms Evanson confirmed that applications to review those licenses had been made to the relevant local authorities (Reading Borough Council and Wokingham Borough Council).

In response to a question from Councillor Peter Argyle, Ms Evanson said that the Home Office had found no evidence that illegal workers had been working longer than stated. Ms Evanson went on to say that the length of time was immaterial as any amount of time constituted illegal working.

PC Simon Wheeler, representing Thames Valley Police (Responsible Authority), in addressing the Sub-Committee, raised the following points:

- In response to a question from Councillor Quentin Webb, PC Wheeler confirmed that the licence number should have read 014279 on all the Thames Valley Police paperwork and apologised for any transposition error that had occurred.
- Thames Valley Police in their role of Responsible Authority wished to support the application to review the licence made by the Home Office. This was based on two grounds. Firstly, the illegal working found at the premises during the visit by the Home Office on 26th June 2018 which constituted a serious criminal offence. Secondly, the poor running of the business which was found when PC Wheeler carried out an unannounced visit to the premises on 16th September 2018.
- With regard to the illegal working found by the Home Office, PC Wheeler reminded the Sub-Committee that evidence of illegal working had been found at all three Miah restaurants within the local Berkshire chain within a four month period in 2018. All three premises licences were currently under review. This showed that the illegal working at Miah's of Pangbourne could not be dismissed as a one off incident or 'a mistake' but rather it appeared that employing illegal workers seemed to be a general practice of the company.
- Thames Valley Police was also concerned that none of the illegal workers appeared to have been paid but rather had been provided with food and a room to stay in. Although there was no evidence in this case, this sort of situation could be linked to 'modern day slavery'. There was also concern that one of the men (male

- 2) had said that he was not working but just visiting which was clearly a ruse to try to avoid detection.
- In response to the application to review the licence made by the Home Office, PC Wheeler carried out an inspection of the premises on 16th September 2018 under Section 59 of the Licensing Act 2003. During the inspection, PC Wheeler was assisted by the Designated Premises Supervisor (DPS) Mr Islam who displayed very poor knowledge of his role and responsibilities. The full list of issues that were found by PC Wheeler were outlined in his letter to Mr Miah on 17th September 2018 (as set out on pages 35 and 36 of the agenda) but included:
 - No Part B (Summary) of the licence was displayed (only on page of Part A was in a frame of the wall).
 - 2. No written authorisation list for the sale of alcohol was available.
 - 3. No Section 57 notice was displayed detailing any member of staff that had knowledge of or where to find the premises licence.
 - 4. No staff training was in place.
- In addition, PC Wheeler found two further members of staff were working on the premises and no right to work documentation relating to them was available for review as part of the inspection.
- To summarise PC Wheeler said the Licence Holder had the responsibility to check that potential employees had the right to work in the UK and this had not been done. In addition, the serious breaches found during his visit on 16th September 2018 meant that Thames Valley Police supported the view that the licence should be revoked.

Questions from the Sub-Committee

In response to a question from Councillor Bridgman, PC Wheeler said he did not obtain the names of the two people who did not have their right to work papers on his visit. The DPS was asked for their details but was not able to provide the information. On this basis, PC Wheeler was not able to say if the two people were two of the men arrested during the Home Office inspection in June 2018.

Councillor Graham Bridgman said that there had been clear issues with the DPS in place at Miah's of Pangbourne and noted that the personal DPS licence had been issued by Reading Borough Council. Councillor Bridgman went on to ask if any action was to be taken specifically with regard to the personal licence for the DPS and PC Wheeler said not at this time.

In response to a question from Councillor Quentin Webb, PC Wheeler said that the DPS had been present throughout the whole of his visit on 16th September 2018.

Mr Ramshed Miah, the Premises Licence Holder and Mr Rameez Dar, the Premises Licence Holder's Solicitor addressed the Sub-Committee and asked if they could present written representations in the form of a witness statement from Mr Jamshed Miah and PAYE information in relation to employees of Miah's of Pangbourne. These written representations had not been submitted at least five working days before the hearing as required for them to be entered into evidence without the agreement of all parties. Following objections from both the Applicant (Home Office) and the Responsible Authority (Thames Valley Police) to the written representations being submitted into evidence, the written representations were not considered by the Sub-Committee.

In addressing the Sub-Committee, Mr Jamshed Miah, the Premises Licence Holder and Mr Dar, the Solicitor representing the Premises Licence Holder raised the following points:

- Mr Jamshed Miah, the Premises Licence Holder had held the premises licence for more than 30 years. Throughout this time no illegal workers had been found at the premises.
- With regard to the visit by the Home Office on 26th June 2018, Mr Miah had offered an explanation regarding the three men who had been found without the necessary right to work documentation and disputed the accusation that they had been working illegally.
- Mr Jamshed Miah had said that the 39 year old male was his nephew and was only visiting him not working in the restaurant. His nephew was staying above the restaurant for the duration of his stay. The only reason the 39 year old male was in the restaurant at the time of the visit was because the DPS (Mr Islam) was late due to the World Cup football.
- With regard to the 47 year old male, Mr Miah said that he had called the restaurant a few days before the Home Office visit asking for work. When asked for his documentation he assured Mr Miah he would be able to provide the paperwork to prove his right to work. Despite being told he was not required to work, the male insisted that he be taken on a trial basis. The male came to the restaurant on the Sunday but only started his trial on the Tuesday. It was agreed that at the end of the trial he would work 20 hours per week for minimum wage if he could provide the necessary paper work.
- The 32 year old male first contacted the restaurant on 18th June 2018 looking for casual work and he was asked if he had the necessary right to work documentation. Again this male was offered the minimum wage and 20 hours work if his trial was successful. This male arrived to start his trial on 26th June 2018 at 18:00.
- The Licence Holder was a successful business man with three restaurants who had been trading for more than 30 years. Mr Miah employed around 8 people per month.
- It was common practice at the restaurant to ask for documentation and take people on a trial basis and only hire them after that trial. This was because staff needed to be trained first.
- It was felt that revocation of the licence would be very harsh especially as there had not been any other cases of illegal working found in the past 30 years.

Questions from the Sub-Committee

Councillor Graham Bridgman questioned Mr Miah regarding the practice of employing people on a trial basis and why their paperwork had not been checked before the trial.

Mr Miah said that some people were very difficult to deal with and insistent that they should complete a trial. Mr Miah said it was very difficult to get the necessary paperwork from these people. Mr Miah was asked if he accepted that he should have obtained all the necessary paperwork before anyone started a trial and he said yes. Mr Miah said that he had employed people on a trial basis in the past without receiving their paper work.

Mr Miah also confirmed that those carrying out the trial would have been paid at the end of the trial. Councillor Cole asked if Mr Miah understood that employment included trials. Mr Miah said that he did understand this and from now on would check all the paperwork beforehand.

With regard to the visit by PC Wheeler on 16th September 2018, Councillor Bridgman asked if the DPS understood his roles and responsibilities in terms of the Licensing Act 2003. Mr Miah said that his DPS, Mr Islam had been very scared by the visit of PC Wheeler and was over protective of the Premises Licence Holder Mr Miah and therefore wouldn't say anything without Mr Miah being present. Mr Miah added that Mr Islam, the DPS was under enormous pressure and had recently had a heart attack. Mr Islam was an experienced man and genuinely honest but had to undertake a number of roles at the restaurant including the cook.

Mr Miah added that he had contacted PC Wheeler to say that he could now show the required documentation.

Councillor Bridgman said that illegal working had been found at Mr Miah's other two restaurants so this clearly was not an isolated incident. Mr Miah said he had been in business for many years. Councillor Bridgman asked if Mr Miah had employed people on a trial basis without gaining the necessary paper work. Mr Miah replied that yes he had employed a few people over the years on this basis.

Questions from the Responsible Authority

In response to a question from PC Simon Wheeler representing Thames Valley Police, Mr Miah said that the DPS, Mr Islam, was the person who received calls from people wishing to be employed and he decided when to employ someone.

PC Wheeler went on to ask who stayed in the accommodation above the restaurant. Mr Miah said that the rooms above the restaurant were not living quarters but rather the rooms were used by staff who might for example live in London and miss their last train home. They could stay overnight in one of the rooms and then travel home in the morning.

PC Wheeler questioned the statement made by Mr Miah that the DPS Mr Islam had been scared when PC Wheeler carried out his visit on 16th September 2018. PC Wheeler said that he did not appear scared but rather did not know anything about the paperwork he was asked to provide. In response Mr Miah apologised and said that he knew the DPS Mr Islam had done the 'wrong thing'.

PC Wheeler asked Mr Miah if he accepted that it was also his responsibility as the Premises Licence Holder to ensure that the correct paperwork was on display. PC Wheeler also asked Mr Miah how often he visited the premises. Mr Miah replied that he visited the restaurant every day or two days. In response to a further question, Mr Miah confirmed that the decorating of the restaurant took place in June 2018. PC Wheeler said that when he visited in September 2018 the paperwork was still not on display. Mr Miah said that he was a human being and made an error by not noticing the paperwork was not on display.

Mr Miah said that he struggled and had difficulties on occasion but he was a good guy and a law abiding citizen. Mr Miah added that he had been trading for over 30 years and no illegal working had been found on his premises in that time.

PC Wheeler asked Mr Miah if he knew what the four Licensing Objectives were and Mr Miah said he thought so but was then unable to name them without looking at his paper work. Mr Miah said that he was under great pressure.

There were no questions of the Premises Licence Holder from the Applicant (Home Office) or from Councillor Pamela Bale, Ward Member for Pangbourne.

In addressing the Sub-Committee, Councillor Pamela Bale, Ward Member for Pangbourne raised the following points:

- The residents of Pangbourne would not condone the practice of the employment of illegal immigrants in the village if that had been the case at Miah's of Pangbourne.
- The residents of Pangbourne did make good use of the restaurant and the takeaway.
- There was concern about the living conditions above the restaurant.
- There were no specific concerns relating to the late night activities in terms of the sale of alcohol. It was noted that if the licence was revoked the restaurant itself could still operate.

As Chairman of the Sub-Committee, Councillor James Cole offered all parties the opportunity to raise questions of what had been said by any other party and that, with exception of those questions minuted, none of the parties wished to do so.

In summing up, the Applicant, Lee-Ann Evanson representing the Home Office said that the application to review had been brought on the grounds of:

- The Prevention of Crime and Disorder
- A total of 12 illegal workers had been found across the three restaurants which could result in a potential £240k fine.

Ms Evanson concluded by saying that the Premises Licence Holder was ultimately responsible for compliance with the law and the Applicant (Home Office) believed the outcome should be the revocation of the licence.

The meeting commenced at 10.00 am and closed at 11.30 am when the Sub-Committee retired to make their decision.

The Sub-Committee retired at 11.30 am to make its decision.

The Committee RESOLVE, having taken all relevant representations into account, that further to Application reference 18/01230/LQN the Premises Licence number 014279 be Revoked.

Reasons

The Sub-Committee had regard to the written representations submitted (within the relevant timescale) in reaching its decision and noted that the Application made by Immigration Enforcement for the review of the premises licence was supported by Thames Valley Police as a responsible authority.

The Sub-Committee heard evidence from Ms Evanson for the Applicant that at approximately 7pm on 26 June 2018 an enforcement visit was carried out at the licensed premises pursuant to section 179 of the Licensing Act 2003. Seven individuals were encountered at the property, three of whom were found to be either overstayers or illegal entrants, and therefore had no right to work in the UK. These individuals were not paid for working at the licensed premises but were instead provided with food and accommodation. The premises licence holder, Mr Jameshed Miah was the premises licence holder for a further two licensed premises, which had also had enforcement visits. Nine immigration offenders were found to be working illegally, making a total of twelve immigration offenders across the three licenced premises. The Sub-Committee found the evidence for the Applicant to be reliable and credible.

The Sub-Committee heard evidence from PC Wheeler for Thames Valley Police as a Responsible Authority that on the 16 September 2018 he undertook a licensing inspection pursuant to section 59 of the Licensing Act 2003. During this inspection he found that:

- Part B of the premises licence was not displayed, instead one page of Part A was displayed in a frame on the wall;
- Part A of the premises licence was not available to be seen when requested;
- no written authorisation list for the sale of alcohol was available;
- no Section 57 notice was displayed detailing any member of staff that had knowledge of or where to find the premises licence;
- no staff training was in place, written or otherwise in relation to the four licensing objectives;
- no age verification policy was in place, no written policy was provided and the Designated Premises Supervisor (Mr Nazmul Islam), who was present during the entirety of the visit, did not understand or know that "Challenge 25" was a condition on the licence;
- the Designated Premises Supervisor was unable to name any of the four licensing objectives and had no understanding of the requirement to promote them within the business;
- two members of staff working on the premises during the inspection could not produce any right to work documentation.

The Sub-Committee found the evidence for the Responsible Authority to be both reliable and credible.

The Sub-Committee heard evidence from the premises licence holder Mr Miah in person and via his solicitor Mr Dar.

Mr Dar said that Mr Miah had held the premises licence in excess of thirty years and that a visit from Immigration Enforcement in February 2018 had found no immigration offenders.

Mr Dar said that Mr Miah did not accept that there were three overstayers or illegal entrants working at the premises when the enforcement visit by Immigration Officers took place on 26 June 2018. Mr Miah said that one individual was his nephew, who was not working but only visiting. The second person described as an immigration offender had telephoned the restaurant looking for work and had insisted on being taken on, on a trial basis – he had started his trial on the day of the enforcement visit and had stated he had documentation which allowed him to work in the UK. The third person described as an immigration offender had contacted the restaurant looking for casual work. He was told that a trial would be needed and his documents would need to be checked.

In relation to the failure to display the premises licence Mr Miah submitted that the restaurant had been redecorated in June 2018 and it was an omission on his part that the premises licence had not been displayed by the time of PC Wheeler's visit in September 2018.

Mr Miah stated that the reason that Mr Islam appeared not to understand his obligations as Designated Premises Supervisor under the Licensing Act 2013 when PC Wheeler

carried out his inspection was because he was frightened of PC Wheeler and was being mistakenly over protective towards him (Mr Miah) as the owner of the restaurant.

The Sub-Committee found the evidence of the licence holder to be unconvincing in many respects. The Sub-Committee found Mr Miah's attempted explanation in relation to the three individuals found on the premises during the enforcement visit in June to be entirely unconvincing. The licence holder had, on his own admission, employed at least two of the individuals concerned on a trial basis with no attempt to obtain and check the individuals' paperwork beforehand to confirm they had a right to work in the UK. The Sub-Committee preferred the evidence of the Applicant that one specific individual had told Immigration Officers that he had worked at the restaurant since 11 June to Mr Miah's evidence that the individual in question had only started working there on the day of the visit. The Sub-Committee also noted that Mr Miah had admitted upon being questioned by the Sub-Committee that he had employed individuals in the past on a trial basis, only to later discover that they had no right to work in the UK.

The Sub-Committee found that the premises licence holder had employed the three individuals and that he had been in business long enough to know that he had to establish an individual's right to work in the UK in advance of any employment, whether described as "trial" or otherwise.

The Sub-Committee found Mr Miah's evidence in relation to the reasons why the Designated Premises Supervisor had not complied with his obligations under the Licensing Act 2003 to be completely unconvincing. They also found the reasons given by the premises licence holder for the failure to properly display the requisite parts of the premises licence to lack credibility.

The Sub-Committee noted that there were further review applications due to be heard in other licence areas relating to two more of the licenced holder's licensed premises, and in very similar circumstances - namely immigration enforcement visits discovering immigration offenders at work. Further, the Sub-Committee noted that, when PC Wheeler carried out his inspection in September 2018, two members of staff working on the premises were unable to produce right to work documentation. These matters further indicated to the Sub-Committee that the premises licence holder had not changed his working practices as regards ensuring that paperwork regarding a person's right to work in the UK was checked before he employed someone.

The Sub-Committee, in considering whether any steps were appropriate for the promotion of the licensing objectives – and in particular the prevention of crime and disorder - concluded that the only step that was appropriate was to revoke the premises licence.

Clir James Cole (Chairman)

Clir Peter Argyle

Cllr Graham Bridgman

Cllr Quentin Webb	
Date: 25 th October 2018	
(The meeting commenced at 10.00 am and closed at 11.30 am)	
Name	Cllr James Cole
Date of Signature	7 th November 2018
Name	Cllr Peter Argyle
Date of Signature	7 th November 2018
Name	Cllr Graham Bridgman
Date of Signature	7 th November 2018
Name	Cllr Quentin Webb
Date of Signature	7 th November 2018