

# **DRAFT**

## **LICENSING SUB-COMMITTEE**

### **MINUTES OF THE MEETING HELD ON TUESDAY, 13 NOVEMBER 2018**

**Councillors Present:** Peter Argyle, Howard Bairstow, Jeff Beck and Richard Crumly

**Also Present:** Anne Marie Baird (Solicitor), Emilia Matheou (Environmental Health & Licensing) and Kaya Shan (Trainee Solicitor), Jo Reeves (Principal Policy Officer)

#### **PART I**

##### **5 Declarations of Interest**

*The commencement of the meeting was delayed briefly as the applicants had mistakenly attended the Council Offices at Market Street.*

*Prior to the commencement of the meeting the applicants agreed that they were happy to be referred to as Mr Miah Senior and Mr Miah Junior.*

There were no declarations of interest received.

##### **6 Existing Licence for Miah's of Pangbourne**

###### **(1) Application No. 18/01433/LQN - Miah's Pangbourne, 26 Reading Road, RG8 7LY**

The Sub-Committee considered a report (Agenda Item 3(1)) concerning Licensing Application 18/01433/LQN in respect of an application to transfer the premises licence of Miah's Pangbourne.

In accordance with the Council's Constitution, Emilia Matheou (Licensing Officer, West Berkshire Council), Mr Jon Payne (Solicitor), Mr Mouadjul Miah (hereafter referred to as Mr Miah Junior) (Applicant) and PC Declan Smith, Thames Valley Police (Responsible Authority) addressed the Sub-Committee on this application.

Mr Payne, on behalf of the applicant, reported that additional information had been submitted to all parties the previous evening at 11pm. He requested that the Sub-Committee, in accordance with Regulation 18 of the Licensing Hearing Regulations, accept the information which included a statutory declaration signed by Mr Miah Senior and confidential right to work information of the current employees on Miah's Pangbourne.

Anne Marie Baird advised that the Sub-Committee could accept the additional information, should all parties be in agreement.

PC Declan Smith advised that Mr Payne had handed him the documentation immediately before the Sub-Committee meeting and he had not yet read it. On inspection, he noted that the document was dated 6 November 2018 and questioned the late submission, however he accepted that the Sub-Committee should receive the information.

Mr Payne raised a further point that Section 9 of the Licensing Act 2003 required the Council to appoint three Members to the Licensing Sub-Committee but four Members were present. Anne Marie Baird advised that the Council resolved on 4 July 2017 to amend the number of Sub-Committee members from three to four.

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*(The meeting was adjourned between 10.22am and 10.36am for the Sub-Committee to review the additional documentation.)*

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

- Miah's Pangbourne had a premises license for the provision of regulated entertainment, late night refreshment and supply of alcohol.
- West Berkshire Council had revoked the license on 23 October 2018 following representations by the Home Office and Thames Valley Police. The grounds given by the Home Office 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 26 June 2018.
- Mr Miah Senior had until 16 November 2018 to appeal the decision.
- On 8 October 2018, the licensing authority received an application from Mr Miah Junior for the premises license to be transferred to him from Mr Miah Senior.
- On 14 October 2018, an objection was submitted by Thames Valley Police on the grounds that the license transfer would undermine the licensing objective concerning the prevention of crime and disorder.
- Under section 43 of the Licensing Act 2003, the premises license was still in effect until either the period in which to apply to the Magistrate's Court had passed or any appeal had been decided by the Magistrate's Court.
- Mr Miah Junior was shown as an active director for Miah's Pangbourne Ltd on Companies House as of 20 October 2018.
- It was recommended that the Committee determine whether to allow or reject the application to transfer the premises license to Mr Miah Junior.

Mr Payne, in addressing the Sub-Committee on behalf of the applicant, raised the following points:

- The applicant was Mr Miah Junior, son of Mr Miah senior. Mr Miah senior had made a statutory declaration that he would have no further involvement in the business.
- The application to transfer the license was made on 20 October 2018. Mr Miah Junior had not been involved in running the business until that point.
- Mr Miah Junior was determined to ensure the licensing objectives were upheld.
- Mr Miah Junior was not involved in the business when the enforcement visit by the Home Office took place on 24 June 2018.
- Satisfactory Right to Work checks had been completed for all employees since Mr Miah Junior assumed control of the business.
- The Home Office had not completed any further enforcement checks since Mr Miah Junior assumed control of the business. If they did, they would not find any illegal workers.
- The Sub-Committee might assume that Mr Miah Junior's youth suggested a lack of experience but he had actually been the holder of the license for the Sun Inn, Basingstoke since June 2016. He had taken the necessary training and been awarded a license. Mr Miah Junior was entitled to hold a license.

Councillor Jeff Beck sought clarification regarding the dates the licencing application was made and the Companies House records. Mr Payne advised that Mr Miah Junior became the restaurant manager on 3 October 2018. The application to transfer the license was made on that day and received by the licensing authority on 8 October 2018. Companies

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House recorded Mr Miah Junior as an active Director on 20 October 2018. The delay was due to processing time by Companies House.

Councillor Peter Argyle sought clarification regarding Mr Miah Junior's involvement with the business prior to October 2018. Mr Payne advised that he had not been involved in managing the business and was not responsible for recruitment until October 2018. Prior to that, Mr Miah Junior had on occasion worked at the restaurant and served alcohol under his personal license.

Councillor Argyle noted that in addition to the illegal workers a number of other issues, such as notices not on display, were identified at the Home Office visit. He asked why Mr Miah Junior, as an experienced license holder, had not identified these issues on his times working at the premises. Mr Payne responded that at the times Mr Miah Junior had worked at the premises in the past, his position had been equivalent to any ordinary member of staff and the display of licenses had been the responsibility of Mr Miah Senior. Mr Miah Junior had ensured such matters had been addressed since assuming control of the business.

Councillor Richard Crumly asked whether any illegal workers were still employed at the premises. Mr Payne advised that all employees were authorised to work and that Mr Miah Junior had no knowledge of the identity of the individuals found to be illegal workers.

PC Smith, in addressing the Sub-Committee on behalf of Thames Valley Police, raised the following points:

- The exceptional circumstances of the case were such that granting the transfer of the license would undermine the licensing objectives.
- The license was reviewed and revoked by the Licensing Sub-Committee on 23 October 2018.
- Thames Valley Police were of the view that the transfer had been applied for in order to circumvent the legal processes.
- Paragraph 8.101, Section 182 of the Secretary of State Guidance (repeated on page 21 of the agenda pack) permitted the police to raise an objection when a person seeking to hold a license was linked to a person involved in crime, disorder or employing illegal workers. The evidence test had, in this case, been met.
- The applicant's solicitor might argue that Mr Miah Junior should not be punished for his father's 'sins', however the Sub-Committee had heard that there had been some involvement in the business prior to October 2018.
- There was evidence of a business link between Mr Miah Senior and Junior in addition to their familial link. Both Mr Miah's were currently recorded on Companies House as active directors of Miah's Pangbourne.
- There was a further business link with Mr Islam Fakrul who was a director of Miah's Pangbourne and Miah's in Spencer's Wood.
- The Sub-Committee should test the evidence on the balance of probability.
- Griffith's LJ's observations in *R v Knightsbridge Crown Court ex p International Sporting Club (London)* were relevant to this case, as was the case of *East Lindsey District Council v Abu Hanif*.

Councillor Beck asked for details of the licensing breaches found, in addition to the discovery of illegal workers. PC Smith stated that he did not have that information to hand.

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Councillor Argyle asked if there was evidence that Mr Miah Junior was linked to the business when the Home Office discovered illegal workers. PC Smith reiterated that there were business links between Mr Miah Junior and other directors of the Miah's collection of restaurants.

Mr Payne asked what dates Thames Valley Police attended the restaurant to complete further visits. PC Smith advised he did not have that information to hand. Mr Payne further asked whether any visits had occurred since Mr Miah Junior assumed control of the business; PC Smith advised that he did not know.

In summing up, Mr Payne on behalf of the Applicant made the following points:

- The Sub-Committee should have regard to the licensing objectives and the Secretary of State's Guidance, in particular paragraphs 9.42 and 9.43 that determinations must be evidence based, justified and proportionate.
- The applicant's association with his father did not preclude him from holding a license.
- The Sub-Committee should determine the application on its merits.
- Mr Miah Senior was no longer involved in the business and had provided a statutory declaration to preclude any future involvement. Breaching the statutory declaration would carry a significant penalty. This constituted a clear break of the business link between Mr Miah Junior and Senior.
- The application had been made in good faith and was not an attempt to subvert the licensing process.
- Mr Miah Junior was the only person listed by Companies House as a person of significant control of Miah's Pangbourne.
- There was no evidence that Mr Miah Junior had breached any licensing objectives. Neither the Home Office nor Thames Valley Police had visited the premises since Mr Miah Junior took over the business.
- It would promote the licensing objectives to agree the transfer of the license. All evidence, including the statutory declaration, supported the case that the Sub-Committee should grant the application.
- The Sub-Committee should also have regards to human rights and consider the applicant separately from his father.
- Whilst the case law relating to East Lindsay was relevant but the Peckham case had no value. Cases heard at the Magistrate's Court did not set precedent.

PC Smith queried the Companies House reference. The Sub-Committee accessed the Companies House records and clarified that Mr Miah Senior was shown as an active director of Miah's Pangbourne.

Having taken the representations into account, the Licensing Sub-Committee **RESOLVED** that Application 18/01433/LQN be refused, for the following reasons:

The Sub-Committee had regard to all the Representations made by the Applicant, by the Applicant through his Legal Representative Mr Payne and by the Responsible Authority Thames Valley Police who had objected to the transfer of the premises licence to the Applicant

The Sub- Committee had regard to the Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) and in particular to paragraph 8.101

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The Sub-Committee determined that there was a direct and tangible link between the Applicant seeking to hold the licence and an individual (Mr Jamshed Miah, the Applicant's father) who had been involved in employing illegal immigrants, and whose premises licence had been revoked at a review hearing on the 23rd October 2018. In addition to this link the Members also noted that Mr Jamshed Miah was still an active Director of the premises. The Sub-Committee had regard to Griffiths LJ's observations in *R v Knightsbridge Crown Court ex p International Sporting Club (London) Ltd* [1982] 1 QB 304 that it risks bringing the licensing regime into disrepute if reckless licence holders can avoid the consequences of their behaviour by simply transferring the licence into someone else's name or selling the business when they get caught and so effectively get away with it.

In addition, the Sub-Committee had regard to the fact that the Applicant has held a Personal Licence since the beginning of 2018. Evidence was presented that the Applicant was a Director of a Company who held a premises licence in relation to another licenced premises. However the Sub-Committee determined that the evidence presented as to the Applicant's involvement with this licenced premises was far from clear and the Applicant when asked appeared evasive. The Sub-Committee therefore determined that the Applicant lacked the experience to hold the premises licence for this particular premises, and they further determined that if the transfer of the premises licence was approved, they considered that the Prevention of Crime and Disorder licencing objective would be undermined and the licencing objectives as a whole

For all the reasons given above, the Sub-Committee determined to reject the application as it was considered that it was necessary to do so for the promotion of the crime prevention objective.

### **(2) Application No. 18/01434/LQN - Miah's Pangbourne, 26 Reading Road, RG8 7LY**

The Sub-Committee considered a report (Agenda Item 3(1)) concerning Licensing Application 18/01434/LQN in respect of an application to vary the premises licence of Miah's Pangbourne.

In accordance with the Council's Constitution, Emilia Matheou (Licensing Officer, West Berkshire Council), Mr Jon Payne (Solicitor), Mr Mouadjul Miah (hereafter referred to as Mr Miah Junior) (Applicant) and PC Declan Smith, Thames Valley Police (Responsible Authority) addressed the Sub-Committee on this application.

Emilia Matheou in addressing the Committee raised the following points:

- The application to vary the premises license to specify an Individual as a Designated Premises Supervisor was received by the licensing authority on 8 October 2018.
- Thames Valley Police lodged an objection to the application on the grounds that it would undermine the licensing objective to prevent crime and disorder.
- The Sub-Committee should have regard to the representations made under the previous agenda item.

Mr Jon Payne in addressing the Sub-Committee raised the following points:

- The Sub-Committee should consider the information and arguments shared under the previous agenda item as they were relevant to this application.
- Mr Miah Junior had a right to hold a license and a right to be a Designated Premises Supervisor.
- The threshold for exceptional circumstances had not been met so the Sub-Committee should consider the application on its merits.
- Mr Miah Junior's links to his father were not relevant.

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Councillor Jeff Beck noted that in the application, Mr Miah Junior had stated his position in the business was a manager and asked when this came into effect. Mr Payne advised that it was the same date the application was made.

Councillor Beck asked what Mr Miah Junior was doing in the lead up to the Home Office visit at the premises. Mr Payne advised that he was running other businesses such as the Sun Inn near Basingstoke. He was not at the premises at the time of the Home Office visit. Councillor Beck asked what involvement Mr Miah Junior had had with the business in the few weeks prior to the Home Office visit. Mr Miah Junior stated that he had not attended the premises for around a month.

PC Declan Smith asked what involvement Mr Miah Junior had with the Sun Inn, who replied that he oversaw the business and had a head chef and front line manager. Mr Payne advised that Mr Miah Junior was a director of the company which owned the Sun Inn.

PC Smith asked what experience the applicant had which would qualify him to be an Individual Designated Premises Supervisor. Mr Miah Junior advised that he had experience at the Sun Inn. Mr Payne stated that he had the experience required by the Licensing Act, had completed training and had a criminal record check. It would be wrong to suggest that additional qualification was needed. Mr Miah Junior had experience running the Sun Inn and had worked in a licensed premises. PC Smith asked when Mr Miah Junior's license for the Sun Inn was granted. Mr Miah Junior advised that it was around a year.

PC Smith asked whether it was Mr Miah Junior's intention to train staff in the licensing objectives. Mr Payne objected to the style of questioning and expressed the view it was cross examination. In any event a Designated Premises Supervisor was not responsible for training staff.

PS Smith asked whether Mr Miah knew what proxy purchasing was. Mr Payne expressed the view that the police should not use the Sub-Committee as a fishing expedition and there had been no allegation regarding a sale to a person purchasing alcohol on behalf of someone underage.

PC Smith in addressing the Sub-Committee raised the following points:

- Thames Valley Police were of the view that there were exceptional circumstances surrounding the case due to the direct links between the applicant and his father, Mr Miah Senior.
- The objection was on the grounds that the application was an attempt to undermine the crime prevention licensing objective.
- If Mr Miah Junior were allowed by the Sub-Committee to become the Designated Premises Supervisor, this would undermine the licensing process.

Mr Payne, in summing up made the following points:

- To undermine meant to destroy.
- Exceptional circumstances would include a personal license holder who was permitted to continue trading despite convictions. This case did not meet the threshold for exceptional circumstances.
- Mr Miah Junior had turned around the business and ensured that right to work checks were in place. The issues identified through inspections had been resolved.
- The police had not provided evidence to substantiate all comments in their objection and some elements were not relevant.
- Mr Miah Junior had not been at the premises at the time of the Home Office visit.

The Sub-Committee retired at 11.42 to make its decision and the meeting was closed.

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Having taken the representations into account, the Licensing Sub-Committee **RESOLVED** that Application No.18/01433/LQN be refused, for the following reasons:

The Sub- Committee had regard to all the Representations made by the Applicant, by the Applicant though his Legal Representative Mr Payne and by the Responsible Authority Thames Valley Police who had objected to the variation of the premises licence to specify an individual Designated Premises Supervisor.

The Sub- Committee had regard to the Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) and in particular to paragraph 4.39

The Sub- Committee also had regard to the Human Rights Act 1998.

The Sub- Committee noted the important role a Designated Premises Supervisor plays in upholding the Prevention of Crime and Disorder licencing objective and the licensing objectives as a whole

The Sub- Committee noted that the Applicant has held a Personal Licence since the beginning of 2018. They also noted that the Applicant had not held the position of a Designated Premises Supervisor at a licenced premises. It was noted that evidence was given that the Applicant was a Director of a limited company which held a premises licence at another licenced premises, but the Sub- Committee determined that the Applicant's involvement in this licenced premises was far from clear and when asked, the Applicant appeared evasive. The Sub- Committee believed that fuller and clearer evidence as to the Applicant's experience and involvement with this licenced premises would have assisted them in their deliberations. The Sub- Committee also determined that evidence as to any licensing training undertaken or Certificates obtained by the Applicant would also have assisted the Sub- Committee in their deliberations.

The Sub- Committee noted that in relation to this particular licenced premises the Applicant's evidence was that he was not involved in any significant way with the management of the property up until he became manager of the licenced premises on the 3rd October 2018, and then a Director on the 20th October 2018. The Sub- Committee determined that he lacked the necessary experience and on being questioned by the Sub-Committee he showed a lack of understanding of the responsibilities he would be undertaking as the Designated Premises Supervisor for this particular licenced premises.

For all the reasons given above, the Sub-Committee determined to reject Application No.18/01433/LQN as it was considered that it was necessary to do so for the promotion of the crime prevention objective.

*(The meeting commenced at 10.12 am and closed at 11.22 am)*

A handwritten signature in black ink, appearing to read 'P. Argyle', with a stylized flourish at the end.

**Name**

**Councillor Peter Argyle**

**Date of Signature**

**26 November 2018**

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A handwritten signature in black ink, appearing to read 'Jeff Beck', with a long horizontal line underneath.

**Name** Councillor Jeff Beck (Chairman)

**Date of Signature** 26 November 2018

A handwritten signature in black ink, appearing to read 'H Bairstow', with a long horizontal line underneath.

**Name** Councillor Howard Bairstow

**Date of Signature** 26 November 2018

A handwritten signature in black ink, appearing to read 'Richard Crumly', with a long horizontal line underneath.

**Name** Councillor Richard Crumly

**Date of Signature** 26 November 2018