

# **LICENSING SUB-COMMITTEE**

## **MINUTES OF THE MEETING HELD ON WEDNESDAY, 16 OCTOBER 2019**

**Councillors Present:** Jeff Beck, Graham Bridgman and James Cole (Chairman)

**Substitute:** Peter Argyle

**Also Present:** Emilia Matheou (Environmental Health & Licensing) and Beth Varcoe (Solicitor) and Jo Watt (Member Services Officer)

### **PART I**

#### **1      Declarations of Interest**

There were no declarations of interest received.

#### **2      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 Miah's of Pangbourne, 26 Reading Road, Pangbourne, RG8 7LY. The application was for the review of the premises licence under Section 51 of the Licensing Act 2003 and the review of the club premises certificate under Section 87 of the Licensing Act 2003.

Councillor James Cole, Chairman, welcomed those in attendance and outlined the reason why the application had to be reheard. It was noted that the Sub-Committee was incorrectly constituted when it met on 23<sup>rd</sup> October 2018 with four Members sitting on the panel instead of three (plus a substitute) as required by Section 9 (1) of the Licensing Act 2003.

Councillor Cole went on to confirm that the review application before the Sub-Committee today, would be treated as a new application and would be determined entirely on its own merits based solely on the evidence presented, whether verbally or in writing.

The Sub-Committee noted that a further Sub-Committee had been arranged to hear two associated Licensing applications for the same premises on the afternoon of 16<sup>th</sup> October 2019. Given these circumstances, Councillor Cole advised that he would announce the decision of the Sub-Committee with regard to the review of the premises license at 1.25pm prior to the commencement of the afternoon hearing.

Councillor Cole addressed the Sub-Committee and said that the Licence Holder via their Solicitors, Mr Payne of Licensing Lawyers, had submitted an application for the submission of late information. Mr Payne said his client had commissioned an independent licensing inspection of the premises and he wished to submit the report of that inspection for consideration by the Sub-Committee. In addition, Mr Payne said that his client had other documentation including statutory declarations and statements that he wished to be considered. This request had been received outside of the five working days deadline for the submission of written information. Mr Payne said that Regulation 18 of Licensing Act 2003 (Hearings) Regulations 2005 allowed for the late submission of material and questioned if the Council's Constitution could override the law.

In addressing the Sub-Committee, Councillor James Cole, Chairman said that as the additional information referred to by Mr Payne had not been submitted at least five working days before the meeting then all parties had to agree to the submission. In

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response to this statement, Mr Declan Smyth of Thames Valley Police, the Responsible Authority, said that Thames Valley Police objected strenuously to the submission of the late information as he felt that the objectors had had enough time to submit the documentation within the necessary timescales.

Councillor James Cole went on to ask Thames Valley Police if they wanted to request permission for the submission of any late information. Mr Declan Smyth said that he did have some additional late information but he knew this would be outside the five day deadline and therefore he had not made the request. Councillor Cole reminded Mr Smyth that he could apply verbally at the meeting for the late submission of the information. Mr Smyth declined the opportunity to apply for the late submission and said he would refer to the information verbally in his presentation.

Given Mr Payne had suggested a disparity between the law and the procedure included in the Council's Constitution with regard to the submission of late information, Councillor Graham Bridgman suggested that the Sub-Committee be adjourned to allow the Members to be given legal advice.

*The Sub-Committee adjourned at 10.12am to receive legal advice and reconvened at 10.25am.*

Councillor Graham Bridgman addressed the Sub-Committee and said that Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 said that Local Authorities may take into account the submission of late information. However, the Council's Constitution stated that if objectors or applicants wished to introduce new material they should provide the material at least five clear working days before the meeting. This information was included in the 'Brief Guide to Licensing Hearings' leaflet that had been sent to all parties and was very clear.

Councillor James Cole, Chairman, said that on the basis of the legal advice that had been given, the Council's Constitution was correct in stating that late information could only be submitted with the agreement of all parties. Councillor Cole addressed Mr Payne and said that as all the parties had not agreed to the submission of late information from the objector/licence holder, the information would not be considered. Councillor Cole added that Mr Payne could raise any additional information verbally in his presentation.

In accordance with the Council's Constitution, Emilia Matheou (Licensing Officer, West Berkshire Council), Ms Lee-Ann Evanson, Home Office Immigration Enforcement (Applicant), Mr Payne, Mr Jamshed Miah and Mr Mouadju Miah (Objector/Premises Licence Holder) and Mr Gary Clarke and Mr Declan Smyth (Thames Valley Police, Responsible Authority) addressed the Sub-Committee on this application.

### **Licensing Officer Representation**

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

- On 30<sup>th</sup> August 2018 Home Office Immigration Enforcement made an application under section 51 of The Licensing Act 2003 for a review of the Premises Licence which was in force at the premises.
- The Home Office also served copies of the application on the licence holder and on the responsible authorities.
- The grounds given for the review by Home Office Immigration Enforcement were that they had grounds to believe that the licence holder would undermine the licensing objective of 'The prevention of crime and disorder' as illegal working had been identified at the premises.
- On 30<sup>th</sup> August 2018 the Licensing Authority emailed the responsible authorities, Ward Members and Parish Councils to advise of the application made.

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- On 3rd September 2018 Home Office Immigration Enforcement provided an additional statement supporting their review application (details of the enforcement visit carried out on 26-06-2018 was provided in the Agenda). As the statement was relevant to the review of the Premises Licence, and was received during the consultation process, the details were added to the original submission and copied to the Responsible Authorities on 3<sup>rd</sup> September 2018.
- The 28 day Consultation Period ran from 31<sup>st</sup> August 2018 and concluded on 27<sup>th</sup> September 2018. Blue notices advertising the application to review were displayed at the premises and Council Offices .These were checked during the consultation period.
- During the statutory consultation period one representation in support of the review application was received from Thames Valley Police, the details of which were included in the agenda. There were no other replies or representations from the other Responsible Authorities.
- The Sub-Committee noted that the licence holder (Mr. Jamshed Miah) was listed on Companies House as an active secretary and person with significant control for Miah's (Pangbourne) Ltd - company number 04592279. The Sub-Committee noted that Mr Jamshed Miah had resigned on 20<sup>th</sup> October 2018 and Mr. Mouadju Miah had then been appointed as Director for the company.
- Mr. Jamshed Miah had been named on the premises licence since 17<sup>th</sup> March 2006 along with Mr Nazmul Islam as the Designated Premises Supervisor (DPS). During this time one application for a variation to the licence had been made on 11<sup>th</sup> February 2010, this was to include regulated entertainment for a maximum of 12 times per annum, late night refreshment and alcohol - off sales.

*The Sub-Committee adjourned at 10.30am for a fire alarm and reconvened at 10.40am.*

### **Questions to Licensing Officer**

Councillor Graham Bridgman asked for clarification as to who was the current DPS and asked if any subsequent application had been made to change the DPS. Ms Matheou said that the current DPS was still Mr Nazmul Islam.

Mr Payne, representing the objector/Licence Holder, questioned the statement from Ms Matheou regarding the current DPS. Mr Payne informed the Sub-Committee that the Licence Holder and DPS was currently Mr Mouadju Miah and this had been the case since 8<sup>th</sup> October 2018, when the then Licence Holder Mr Jamshed Miah had applied to transfer the role of Licence Holder and DPS with immediate effect under Section 43 of the Licensing Act 2003. Mr Payne confirmed that at this point in time, the current DPS (and Licence Holder) was Mr Mouadju Miah.

Ms Matheou confirmed that an application under Section 43 of the Licensing Act 2003 had been received and the transfer had taken place. However, it was her understanding that today's Sub-Committee was a re-hearing of the Sub-Committee that took place on 23<sup>rd</sup> October 2018 and the Licence that was in place on that date. Mr Payne said that the transfer of the Licence Holder and DPS was fundamental to this rehearing. Councillor Graham Bridgman said that he accepted the point and said that there would be an opportunity for Mr Payne to explain the situation in more detail during his presentation to the Sub-Committee.

The applicant, Ms Lee-Ann Evanson, Chief Immigration Officer with the Home Office, in addressing the Sub-Committee, raised the following points:

- The Government had made the Immigration Service of the Home Office a Responsible Authority under the Licensing Act 2003. The Immigration Service was

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therefore one of the agencies responsible for ensuring the Licensing Objectives had been met by Licence Holders. In this case the Immigration Service had received intelligence that illegal immigrants were working at the premises and this would breach the licensing objective 'the prevention of crime and disorder'.

- Ms Evanson went on to add that the role of the Licence Holder should not be underestimated in ensuring that the four Licensing Objectives had been met. The Home Office carried out an unannounced inspection of the premises on 26<sup>th</sup> June 2018 and the Sub-Committee noted the following points:
  - The visit to Miah's of Pangbourne was the second of three visits to restaurants operated by Mr Jamshed Miah and Mr Islam, the other two being Miah's Garden of Gulab in Reading, where five immigration offenders were found working illegally on 13<sup>th</sup> May 2018 and Miah's Spencers Wood, Spencers Wood, where four immigration offenders had been found working illegally. In total 12 immigration offenders had been found to be working illegally across the three premises. Mr Jamshed Miah was the Licence Holder for all three establishments.
  - On 26<sup>th</sup> June 2018, a team of eight Home Office Officers, attended the premises under Section 179 of the Licensing Act 2003 (as amended by the Immigration Act 2016) at 19:03 hours. The restaurant was open and several customers were in the dining area. A total of seven staff had been encountered, four of whom had been cleared and were working legally. The remaining three males were from Bangladesh and all of them had been found to be immigration offenders with no right to work in the UK.
  - The first male, a 47 year old illegal immigrant was arrested and detained. He was in the kitchen cooking when the team entered the premises. He stated that he had been employed by Mr Jamshed Miah, who he had asked if he could help in the restaurant. This male was apparently asked if he had any right to work documentation but had not shown anything to Mr Miah. He said it was his second day working at the premises with his first day being on the Sunday (visit was conducted on a Tuesday). He stated that he had worked from 6pm to 10pm on the Sunday and he had started at 6pm on the day of the visit. He stated that he had not been paid for his work so far and no pay had been agreed, although he did receive food three times a day and stayed in a room above the restaurant for free.
  - The second male was a 39 year old over stayer who was arrested and detained. He was dressed smartly in clothing typical of a waiter in such an establishment and when the team entered he was seen carrying a tray of food from the kitchen towards the dining area. However, when he was spoken to (after a slight delay) he was watching football on his phone and told the officer that he was a customer. He said he was just at the premises visiting his uncle but ultimately admitted to having stayed in the accommodation upstairs for two nights, although he continued to deny working at the premises.
  - Finally, a 32 year old over stayer who was arrested, before subsequently being asked to leave the premises, as he did not have permission to work. He was not detained as he had an outstanding application with the Home Office. He was behind the bar pouring a drink when the team entered the premises. He stated that he had worked at the premises as front of house since 11<sup>th</sup> June 2018 and that he had called the restaurant asking for work. He stated he had been asked for paperwork but had not shown anything which showed he had right to work in the UK. He spoke to a 'Mo' on his first day and was working 3 days a week from

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5.30pm to 10pm. He said he was not paid for his work but received a room and free food.

- A male, who had arrived at the premises whilst the visit was taking place and identified himself as the manager of the restaurant, was spoken to and he stated that he was in charge of employing staff and said he knew males 1 and 2. He stated that male 1 had been working at the premises for 2 or 3 weeks and helped in the kitchen. He said he did not have fixed hours and came when he was needed. He said that the male was not paid but was given food and accommodation. He said he had not asked the male for any identification. He said male 2 was a family member and was visiting him. He said he had helped out a tiny bit whilst he was there by opening the restaurant for him as the other manager was late as well as opening the door for customers and showing them to their seats. He said the male was not paid but would be given food.
- An illegal working civil penalty referral notice was served on the company resulting in a fine for the business of £20,000.
- Ms Evanson added that the Home Office had carried out a further visit to the Miah's premises at Spencers Wood on 31<sup>st</sup> August 2019 and had found an illegal immigrant working at the premises.

### Questions to Applicant

In response to questions from Councillor James Cole, Ms Evanson made the following comments:

- The Miah's company had a payment plan in place to pay for the £20k fine.
- In Ms Evanson's opinion the arrangements that had been described by the illegal workers were akin to modern day slavery.
- Ms Evanson confirmed that the 'male' described as arriving at the premises whilst the visit was taking place (page 23 of the agenda) was Mr Mouadju Miah, son of Mr Jamshed Miah.
- Ms Evanson had no further information on the management of the Spencers Wood premises.

In response to questions from Mr Payne of Licensing Lawyers, Solicitor for the objector/Licence Holder Ms Evanson made the following statements:

- There had not been a further visit to the Pangbourne premises since the visit on 26<sup>th</sup> June 2018. Ms Evanson explained that the immigration service was intelligence led and there had not been any intelligence received to prompt another visit to the Pangbourne premises. Ms Evanson added that there was no suggestion that modern day slavery had taken place in this case.

Mr Payne then went on to address the Sub-Committee regarding the order in which parties presented their cases to the Sub-Committee. Mr Payne said that in his opinion, the current process would lead to an unfair hearing as his client would have no right of reply after Thames Valley Police had made their presentation.

Councillor James Cole, Chairman of the Sub-Committee said that the Council's Constitution did allow for the process to be varied if the Sub-Committee was in agreement. On that basis, Councillor Graham Bridgman proposed to amend the order in which the remaining witnesses were to be heard to allow Thames Valley Police to present their evidence first, followed by Mr Payne representing the Objector/Licence Holder. Councillor Jeff Beck seconded the proposal.

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The Sub-Committee agreed that the usual running order would be altered to allow the Objector/Licence Holder to present their evidence last.

### Thames Valley Police/Responsible Authority Representation

In addressing the Sub-Committee, Mr Declan Smyth of Thames Valley Police, made the following points:

- Mr Smyth said that as a Responsible Authority, Thames Valley Police were in attendance to support the review that had been submitted by the Home Office. Mr Smyth said that given illegal workers had been found working at the premises and there was a possibility these workers had been exploited for financial gain then the Sub-Committee should give serious consideration to the revoking the licence.
- The Licence Holder should have carried out the necessary checks to ensure that the people he employed were legally allowed to work in the UK and that licensing objectives were met.
- Mr Smyth said that Officers from Thames Valley Police had revisited the premises on 11<sup>th</sup> October 2019 and several failures in terms of the licensing legislation had been detected. Mr Smyth added that the licence had not been displayed properly and whilst there were some records of staff training, they were minimal and not of good quality. In addition, the member of staff who was present at the time of the visit was not able to name any of the four licensing objectives and had no understanding of the training documentation.
- Mr Smyth summarised by saying that in his opinion, he did not believe the Licence Holder had made any progress since the visits in 2018 and that Thames Valley Police had a lack of confidence in the premises. In Mr Smyth's opinion it was still appropriate to revoke the licence.

### Questions to Thames Valley Police/Responsible Authority

In response to a question from Councillor James Cole, Mr Smyth said that the re-visit had been carried out by himself and Mr Simon Wheeler on 11<sup>th</sup> October 2019 at 1.30pm.

Following a question from Councillor Graham Bridgman, Mr Smyth said that neither Mr Jamshed Miah nor Mr Mouadjul Miah were present at the visit on 11<sup>th</sup> October 2019. Mr Dipal Chetteri was the person present. Mr Chetteri then made contact with Mr Mouadjul Miah who then spoke with Simon Wheeler on the phone.

Mr Payne, representing the Objector/Licence Holder, said that the current Premises Licence for Miah's of Pangbourne had eight conditions on it. Mr Payne asked Thames Valley Police if there had been evidence that any of the conditions had been breached when they visited on 11<sup>th</sup> October 2019.

In response, Mr Smyth said that there was no evidence of due diligence in relation to noise. The conditions relating to noise stated that regular hourly checks of noise must be carried out and that noise levels would be monitored. It was acknowledged that there had not been a breach of the current conditions but Mr Smyth said he would expect to see some documentary evidence of the checks taking place.

Mr Smyth said that Thames Valley Police also had concerns regarding the individuals who were present at the time of the visit. One of the individuals excused himself early on and another left for prayers at the Mosque. Of the three people who were at the premises, only one of them had the necessary 'right to work' paperwork available for inspection and this was a photocopy of a Pakistani passport. This person had been working at the premises for a week. The Sub-Committee noted that a person's 'right to work' documentation had to be in place before they started work. Mr Smyth said this was further evidence of lack of due diligence by the Licence Holder.

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Mr Smyth said that the other two individuals did have the necessary paperwork in place and it had been signed the day before on 10<sup>th</sup> October 2019. Mr Smyth confirmed that they had checked the staff files including the biometric file for the individual with 'right to work' paperwork.

In response to further questions from Mr Payne, Mr Smyth acknowledged that it was not a requirement of the current conditions to provide written records of the noise monitoring and that Thames Valley Police were not aware of any live music events at the premises. Mr Smyth added that he was aware that under the current conditions, there was no requirement for the Licence Holder to record training that staff had undertaken. Mr Smyth said it was a requirement of the Licensing Act to have part A of the licence on display and this had not been adhered to. However, it was noted that the legal position was that there was no legal requirement to display Part A of the licence in the premises but it must be kept on the premises.

Councillor James Cole asked Mr Smyth what evidence he would expect to see if the conditions in place did not ask for written evidence. Mr Smyth said that he would expect a well-run premises to provide written evidence in any case and this would show good due diligence. The only documentary evidence that could be found was a multiple choice check for identity checks. Again Mr Payne reminded the Sub-Committee that this was not a legal requirement under the conditions of the current licence.

### **Objector/Premises Licence Holder Representation**

In addressing the Sub-Committee, Mr Payne, Solicitor representing the Objector/Licence Holder, said that it was a statement of law that the current Licence Holder was Mr Mouadjul Miah and this had been the case since 8<sup>th</sup> October 2018 when an application was made to transfer the licence with immediate effect. Mr Mouadjul Miah had been in a difficult situation as he had not been sent a copy of the licence following the transfer and therefore he was not able to display it.

Mr Mouadjul Miah, Licence Holder, addressed the Sub-Committee and made the following points:

- He had previously run a gastro pub which had involved a lot of alcohol sales and therefore he had experience of the requirements of licensing legislation. Mr Mouadjul Miah said that as the new Licence Holder, it was his intention to undo the damage that had been done in the past. Mr Miah went on to say that his first priority had been to ensure that Licensing and employment procedures were up to date and compliant and he had had to do this without any assistance from the Local Authority. Mr Miah said that he had employed an independent Licensing Consultant to carry out an inspection of the premises and their report stated that they were happy that the Licence Holder was following the correct procedures and the premises would be fully compliant.
- The Sub-Committee noted that when the application to review the licence had been originally heard in October 2018, Mr Jamshed Miah (Mr Mouadjul Miah's father) was in charge. Mr Mouadjul Miah said that at that time, there had been a lack of understanding regarding the employment of illegal workers, specifically the belief that people could be taken on for a short period of time (on a 'trial basis') before they had provided their paperwork to see if they were suitable for the job. Mr Mouadjul Miah said that this practice had been clearly wrong and he acknowledged the errors that had been made. Mr Miah added that he had put effort into ensuring these mistakes did not happen again.
- The Sub-Committee noted that Mr Jamshed Miah, who had run the business for 35 years, was now taking a backwards step and would not be involved in the running of the premises at all. Mr Payne declared that Mr Jamshed Miah had signed a Statutory

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Declaration saying that he had handed over the business to his son Mr Mouadjul Miah and had renounced any further involvement in the business. The Sub-Committee noted that the Statutory Declaration also stated that Mr Mouadjul Miah had not been involved in the employment or management of illegal workers and knew nothing about this activity. In addition, the Sub-Committee noted that Mr Mouadjul Miah now had the full and only authority to employ staff at the premises. Mr Payne said that the Statutory Declaration was a very serious matter and if breached, it could result in a prison sentence for Mr Jamshed Miah.

- Mr Payne said that Mr Mouadjul Miah had ensured that the right to work documentation for each and every person employed at the premises was now in place and this had been seen by Mr Fender who had carried out the independent inspection of the premises.

In summary, Mr Payne, representing the Objector/Licence Holder made the following points:

- That any decision made by the Sub-Committee should be evidence based and proportional to what it was intended to achieve. The current Licence Holder, Mr Mouadjul Miah had taken considerable action to ensure that the employment of illegal workers had been stopped. In Mr Payne's opinion the Sub-Committee should take the least onerous course of action which would be to not revoke the licence but apply conditions to the existing licence.

### **Questions to Objector/Premises Licence Holder**

In response to questions from Councillor Bridgman, Mr Mouadjul Miah said that he had run the Gastro Pub from 2017 until August 2019.

Mr Mouadjul Miah said that he had helped out with all three of the Miah's premises whilst running the Gastro Pub but he took over the Miah's business properly in October 2018 when his father stepped down.

Councillor Bridgman asked Mr Mouadjul Miah if he was the male who arrived at the premises and identified himself as the manager and responsible for employing staff (referred to on page 23 of the agenda). Mr Mouadjul Miah said that he was that male and he said he was the manager as he had some authority. He also confirmed that he knew males 1 and 2 who were detained for illegal working.

The Sub-Committee noted that the Statutory Declaration signed by Mr Jamshed Miah stated that his son Mr Mouadjul Miah had not been involved in the management of the premises. Mr Mouadjul Miah confirmed that whilst he did know some of the staff, he had not been the actual manager and had been focused on his own Gastro Pub premises.

In response to a question from Councillor Graham Bridgman, Mr Mouadjul Miah confirmed he had not been at the premises on 11<sup>th</sup> October 2019 when Thames Valley Police Officers had visited. Councillor Bridgman asked Mr Mouadjul Miah that now he was the DPS of the premises, he must be concerned that the staff members on site did not understand the licensing objectives. Mr Miah responded to say that he had provided training to all the staff and anyone selling alcohol had to have read and understood a document entitled 'Guidance to Licensing' before Mr Miah gave them permission to sell alcohol.

Mr Payne said that perhaps the Sub-Committee would wish to add some form of condition to the licence regarding the level and quality of training of those who were permitted to sell alcohol, for example in line with a recognised industry standard. In addition, as there was currently no requirement to record any training that took place, this could also be added as a condition to the licence.

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In response to a question from Councillor Jeff Beck, Mr Mouadju Miah said that the gentleman who did not have his full right to work paperwork available at the Thames Valley Police visit on 11<sup>th</sup> October 2019 was Mr Mahmood Khan. Mr Mouadju Miah confirmed that the 'right to work' checklist for Mr Khan had been completed the day before the visit on 10<sup>th</sup> October 2019 but as the Pangbourne premises did not have a printer or scanner then it had not been possible to place a paper copy of the documentation in the file for inspection. Mr Miah confirmed that the paperwork had not been in the file at the time of the visit but that it was his intention to return the next day to file the papers. Mr Miah said that he was not contacted by Thames Valley Police at the time of the visit and he had the relevant documentation in relation to the individual in his possession. The Sub-Committee noted that Mr Khan did have identification and his biometric card which confirmed that he was not an illegal worker and this was shown to the Thames Valley Police Officers at the time of the visit.

For the purposes of clarification, in response to a question from Councillor Graham Bridgman, Mr Mouadju Miah confirmed that the person who had been identified by Thames Valley Police as not appearing to have the correct paperwork did have the right to work and the necessary documentation was in the possession of Mr Miah the Licence Holder and DPS.

Mr Miah went on to say that he had had his Personal Licence for around 1.5 to 2 years but his Personal Licence had not been in place when he started at the Gastro Pub.

Mr Declan Smyth asked Mr Mouadju Miah why, having suggested the condition regarding providing training to a particular standard, that practice was not already in place. Mr Payne said that training was currently in place and the type of training was not prescribed under the existing licence. Any additional conditions that might be added to the licence would provide a 'belt and braces' approach to training.

In response to a further question from Mr Smyth, Mr Mouadju Miah confirmed that he understood that a 'trial period' of employment did not exist and that right to work checks had to be carried out before any employment commenced whether that be on a trial basis or not.

### Comments by Applicant

The applicant, Ms Lee-Ann Evanson, Chief Immigration Officer with the Home Office, summarised her case with the following points:

- In her opinion the premises had seriously undermined the Licensing objective of 'the prevention of crime and disorder'.
- 12 illegal workers had been found across the three Miah's premises which had resulted in £100k fines to the business.
- In her opinion, the action taken by the Home Office had had no impact on the Licence Holder and no meaningful attempt had been made by the Licence Holder to promote the licensing objectives. The revocation of the licence was the desired outcome of the Home Office.

### Comments by Objector/Premises Licence Holder

In response, Mr Payne representing the Objector/Licence Holder, said that he was astonished that the Home Office could think there had been no impact to the Licence Holder when it was clear that was the case.

The Sub-Committee retired at 11.55 am to make its decision.

The Licensing Sub-Committee of West Berkshire Council met on **16th October 2019** and considered Application **18/01230/LQN** made by Home Office Immigration Enforcement for a review of Premises Licence Number 014279 in respect of premises known as

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**Miah's of Pangbourne, 26 Reading Road, Pangbourne, RG8 7LY** and resolved to modify the conditions of the premises licence which are set out below.

In coming to their decision, the Sub-Committee had regard to the four licensing objectives:

1. the prevention of crime and disorder;
2. public safety;
3. the prevention of public nuisance; and
4. the protection of children from harm.

They also considered the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 and West Berkshire Council's Statement of Licensing Policy.

### **Representations**

The Sub-Committee treated the application as a new hearing to be considered on its own merits and heard representations made by:

1. for the Applicant: Ms Lee-Ann Evanson, Home Office, Immigration Enforcement;
2. for the Objectors: Mr. Payne (Licensing Lawyers), Mr. Mouadjul Miah and Mr. Jamshed Miah;
3. for a Responsible Authority (Thames Valley Police): Mr. Gary Clarke and Mr. Declan Smyth.

The Licensing Sub-Committee was asked to read and then consider written representations submitted by the objectors at the hearing. 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 an objection from the Responsible

Authority to the written representations being submitted into evidence, the written representations were not read or considered by the Sub-Committee.

### **Decision**

Having taken the written and oral representations into account, the Licensing Sub-Committee considered Application **18/01230/LQN** and RESOLVED to modifying the conditions of the premises licence by adding new conditions and amending current conditions attached to the premises licence as well as the relevant mandatory conditions of the Licensing Act 2003 or secondary legislation.

### **Additional conditions**

#### **The Prevention of Crime and Disorder**

1. Every supply of alcohol under the premises licence must be made by a person who has completed training to the minimum standard of the BII Responsible Alcohol Retailing course or the SWERCOTS NPOANS training package. This training must be documented in writing and retained for at least one year and made available on request to Thames Valley Police and authorised officers of West Berkshire Council.
2. Refresher training shall be provided at least every six months. This training must be documented in writing and retained for at least one year and made available on request to Thames Valley Police and authorised officers of West Berkshire Council. The content of the training must be reviewed on a regular basis, with a record of such review retained and made available in the same manner as the training record.
3. At all times that the premises is operating under this licence, the Premises Licence Holder shall ensure his/her/its staff operate a Challenge 25 Policy (to minimise the risk of

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alcohol being sold to underage consumers). This Policy shall (as a minimum) provide that before entry (or alternatively before any sale of alcohol), any person who appears to be under the age of 25 will be required to produce photo ID in the form of a passport driving licence, UK Military ID card; PASS (or similar) card to prove that he/she is over the age of 18, before being permitted.

4. Notices advertising the Challenge 25 and proof of age policies shall be displayed in prominent places at the premises so that they can be seen internally and externally.

5. All staff employed in the sale of alcohol shall be trained in respect of Challenge 25 Policy operated by the premises. This training must be documented in writing and made available on request to Thames Valley Police and authorised officers of West Berkshire Council. Staff must receive refresher training at least every six months and the content of the training must be reviewed and updated on a regular basis, with a record of such review retained and made available in the same manner as the training record.

6. The premises shall maintain a refusals register. This register shall:

(a) record the date, time, member of staff, what was requested, whether ID was produced and if so, what ID and the reason for refusal;

(b) The Premises Licence Holder or Designated Premises Supervisor or another person authorised in writing by one or other of them must review the refusals register weekly;

(c) be signed off by the Premises Licence Holder or Designated Premises Supervisor or another person authorised in writing by one or other of them at the end of each trading session;

(d) be available for inspection by Thames Valley Police and authorised officers of West Berkshire Council upon request; and

(e) be retained for at least one year

7. The Premises Licence Holder, Designated Premises Supervisor or another person authorised in writing by one or other of them must undertake right to work checks prior to the commencement of employment of all staff employed at the licensed premises on any basis whatever. This is a continuing obligation and further right to work checks must be undertaken by the Premises Licence Holder, Designated Premises Supervisor or another person authorised in writing by one or other of them in the event any member of staff's right to work is time-limited.

8. Copies of all documentation relating to such right to work checks (including recording the date the check was made, the person who made those checks and any "share code" and "Positive Verification Notice" received from the Home Office) must be retained at the premises for at least 12 months and made available on request to Thames Valley Police, Home Office or authorised officers of West Berkshire Council.

9. An incident log shall be maintained to record all incidents of crime and disorder including any incident of illegal working and public safety at the premises. The log shall:

(a) give dates, times and full details of any incident;

(b) record the names of any staff, involved;

(c) record the details of occasions when the police or home office are called to the premises;

(d) be signed off by the Premises Licence Holder or Designated Premises Supervisor or another person authorised in writing by one or other of them at the end of each trading session;

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- (e) be reviewed and signed weekly by the Premises Licence Holder or Designated Premises Supervisor or another person authorised in writing by one or other of them;
- (f) be available for inspection by Thames Valley Police, Home Office and authorised officers of West Berkshire Council upon request; and
- (g) be retained for at least one year

### **Amended Conditions**

#### **Conditions agreed with Environmental Health 04/02/2010**

10. Regular hourly checks will be made across the road to ensure that the music is not excessively loud during any live music event. These checks will be documented in writing and retained for at least one year and made available on request to Thames Valley Police and authorised officers of West Berkshire Council.

11. Noise levels from all live events will be monitored with a sound level meter at the boundaries of nearby noise sensitive dwellings to ensure that the noise levels are not clearly audible at these locations. The monitoring of these noise levels will be documented in writing and retained for at least one year and made available on request to Thames Valley Police and authorised officers of West Berkshire Council.

### **Reasons**

The Licensing Sub-Committee noted that despite the fact this application was to be treated as a new application to be determined on its own merits, the Licensing Sub-Committee did not have any written representations which were submitted into evidence in the last twelve months. At the hearing, Thames Valley Police had objected to the introduction of the written representations submitted by the Objector later than five working days before the hearing. Furthermore, the Applicant and Responsible Authority, Thames Valley Police, had not submitted any written representations relating to this period. As a consequence, the Licensing Sub-Committee felt that there was a lack of evidence in this regard and it was only in a position to consider oral representations made by the parties at the hearing.

As part of its deliberations, the Licensing Sub-Committee considered the representation made by the Objector and noted that from the 8th October 2018, and at the time of the hearing, Mr. Mouadju Miah was to be treated as the premises licence holder and designated premises supervisor. This was in accordance with sections 37 and 38, 42 and 43 of the Licensing Act 2003 respectively. This was in light of the fact the applications were to take immediate effect until determined at a hearing following objections made by the Responsible Authority, Thames Valley Police.

The Licensing Sub-Committee had regard to the Revised Guidance issued under section 182 of the Licensing Act 2003 and in particular to paragraphs 11.27 and 11.28.

The Licensing Sub-Committee acknowledged the seriousness of the evidence of illegal working at the premises as set out in the Application dated 30th August 2018 and the representation submitted by Thames Valley Police in support dated 20th September 2018 when Mr. Jamshed Miah had been the Premises Licence Holder. The Licensing Sub-Committee further noted the

Home Office's representation that there had been another incident of illegal working at Miah's of Spencers Wood, Tankerton House, Basingstoke Road, Spencers Wood, RG7 1AE on the 31<sup>st</sup> August 2019 and therefore after October 2018 when Mr. Mouadju Miah stated he took over management of the premises. The Licensing Sub-Committee also had regard to the evidence

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of Thames Valley Police in relation to their visit to the premises on the 11<sup>th</sup> October 2019 that there was evidence of poor practices and a lack of due diligence.

Notwithstanding this, however, the Licensing Sub-Committee further noted Thames Valley Police's evidence that the recent visit had not identified a breach of the licensing conditions or provided evidence of illegal working at the premises but rather, that the relevant documentation in relation to one individual had not been produced. The Licensing Sub-Committee also had regard to Mr. Mouadjul Miah's position that he was not contacted by Thames Valley Police at the time of the visit and he had the relevant documentation in relation to the individual in his possession.

As a consequence and for the reasons set out above, the Licensing Sub-Committee determined that there was not sufficient evidence to demonstrate that the only step to be taken in relation to this premises licence in order to promote the licensing objective of the prevention of crime and disorder, was revocation. The Licensing Sub-Committee therefore determined that the appropriate step for the promotion of the licensing objectives was to modify the conditions attached to the Premises Licence by adding new conditions and amending current conditions, rather than revocation of the Premises Licence.

*(The meeting commenced at 10.00 am and closed at 11.55 am)*

**Name** .....

**Date of Signature** .....

**Name** .....

**Date of Signature** .....

**Name** .....

**Date of Signature** .....