

# **LICENSING SUB-COMMITTEE**

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

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

**Substitute:** Adrian Abbs

**Also Present:** Emilia Matheou (Environmental Health & Licensing), Beth Varcoe (Solicitor) and Stephen Chard (Principal Policy Officer)

### **PART I**

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

There were no declarations of interest received.

#### **2 Existing licence for Miah's of Pangbourne**

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

The Sub-Committee considered two reports (Agenda Items 3(1) and 3(2)) concerning, respectively, Licensing Application 18/01433/LQN in respect of an application to transfer the premises licence for Miah's of Pangbourne and Licensing Application 18/01434/LQN in respect of an application to vary the premises licence to specify an individual as Designated Premises Supervisor (DPS) for Miah's of Pangbourne.

Councillor James Cole, Chairman, introduced the meeting and welcomed those in attendance. He outlined the reasons why these applications had to be reheard. It was noted that the Sub-Committee was incorrectly constituted when it met on 13 November 2018 with four Members sitting on the Sub-Committee 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 applications before the Sub-Committee would be treated as new applications and determined entirely on their own merits based solely on the evidence presented, whether orally or in writing.

In accordance with the Council's Constitution, Emilia Matheou (Licensing Officer, West Berkshire Council), Mr Payne, Mr Jamshed Miah and Mr Mouadjul Miah (Licensing Lawyers/the Applicant), and Mr Declan Smyth and Mr Gary Clarke (Objector/Responsible Authority) addressed the Sub-Committee on this application.

#### **Licensing Officer Representation**

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

- On 8 October 2018, whilst the Premises Licence was under review (and awaiting the decision of the hearing), Mr Mouadjul Miah made an application to the Licensing Authority to transfer the Premises Licence into his name. On the same date, Mr M Miah also made an application to the Licensing Authority to vary the Premises Licence to specific himself as the DPS.
- On 14 October 2018, Thames Valley Police lodged an objection to both of these applications.
- Thames Valley Police believed that the transfer and change of DPS was an attempt to circumvent the review proceedings. If the applications made to transfer the licence,

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and then to vary the premises licence to change the DPS were allowed to take place, then Thames Valley Police believed that the crime prevention objective would be undermined.

### **Applicant Representation**

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

- Significant evidence had been presented at the Sub-Committee held in the morning and Mr Payne explained that he would not repeat this.
- Mr M Miah (Miah Junior) had taken responsibility for the business over the past 12 months and in that time had put in place a significant number of measures to promote the Licensing Act's objectives and ensure compliance.
- A licensing consultant (a former licensing officer) had been engaged to assist with operations to ensure the premises was compliant with the law. This included training programmes for staff.
- Standard conditions set out in the Secretary of State guidance would be adhered to.
- It was noted that Thames Valley Police (TVP) could object in a case where they felt there were exceptional circumstances which meant that granting the application would result in the crime prevention objective being undermined. Reasons would need to be presented by Thames Valley Police if this was felt to be the case.
- Mr Payne reported that in the 12 months since Mr M Miah had taken responsibility for the business, there had been no incidents and no crimes. The written TVP representation did not make reference to any incidents in that time. There had been no inspection from TVP in the past year other than on 11 October 2019. There was no evidence that conditions had been breached. The crime prevention objective was not being undermined. The exceptional circumstances referred to did not apply.
- Improvements would continue to be made.
- Mr Payne clarified that all employees of the business were legally entitled to work in the UK.
- Mr M Miah was the right person to operate the premises. He endeavoured to promote the Licensing objectives and would continue to do so. Mr J Miah (Miah Senior) no longer had responsibility for the business and was not the DPS.

### **Questions to Applicant**

Councillor Graham Bridgman questioned the conditions that had been referred to. Mr Payne confirmed that these conditions would cover:

- The premises licence holder undertaking a right to work check of any new employee.
- A record being made of right to work checks that would be retained on the premises for at least six months.
- A monthly check being undertaken to ensure compliance with the Licensing Objectives and to ensure that policies and procedures relevant to licensing were implemented at the premises. The results of these checks would be recorded in a log book and kept available for inspection for a period of at least six months.
- The retention of the services of a licensing consultant until at least 1 January 2021 who would be required to produce an independent licensing compliance report on a six monthly basis.
- The sale of alcohol only being made by employees who had completed minimum standard training.

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- Mr J Miah would not be engaged in the employment of staff at the premises.

In response to questions from Mr Smyth, Mr Payne explained that, if the applications were approved, Mr M Miah would be the DPS for both the Pangbourne and the Spencers Wood premises. The premises operating in Reading did not sell alcohol and as such it was not necessary to appoint a DPS.

Mr M Miah confirmed that the Home Office had inspected the Spencers Wood premises on 31 August 2019, but had not reported any concerns, i.e. regarding immigration.

Mr Smyth then questioned this point as he understood that a man dressed in Chef's whites was arrested on the grounds of being illegally employed at the Spencers Wood premises on 31 August 2019. This was referred to in the evidence given by the Home Office at this morning's Sub-Committee.

Mr M Miah confirmed that the man in question was arrested but this did not relate to his right to work.

In response to follow up questions from Mr Smyth, Mr M Miah confirmed that the individual was wearing Chef's whites as he was working legally in the kitchen area.

Mr Smyth felt this was a material point, the individual was found in a walk in fridge and Mr Smyth felt he was hiding. While improvements had been referred to at the Pangbourne premises by the applicant, he questioned this as issues were still occurring at the Spencers Wood premises.

Councillor Bridgman asked for confirmation on why the individual was arrested. Mr M Miah explained that he was arrested for not appearing in court. He did not know what the charge was. Mr M Miah did however clarify that the individual was working legally and in fact was permitted to complete his shift on the day by TVP Officers. Documentation confirming right to work in the UK was held for the individual concerned.

### **Objector/Responsible Authority Representation**

Mr Smyth, in addressing the Sub-Committee, raised the following points:

- TVP objected to both applications and the clear rationale for doing so was outlined in the agenda paperwork.
- Mr Smyth's understanding of the purpose of this Sub-Committee was to re-hear the applications from the 13 November 2018 and not consider what might have occurred in the intervening time period.
- Companies House listed Mr J Miah as Director up until the Sub-Committees held in October/November 2018. He was then replaced by Mr M Miah. However, Mr M Miah's experience was limited and while he had gained some experience from working in the Miah's premises, TVP were not confident that he could operate the premises and adhere to the licencing objectives. The concern remained that illegal immigrants would be employed.
- TVP hoped that both applications would be refused by the Sub-Committee.

### **Questions to Objector/Responsible Authority**

In response to a question from Councillor Bridgman, Mr Smyth gave the view that a transfer of the premises licence from father to son did not achieve a clear transfer of the business and its interests. Mr Smyth felt that a vested interest remained in the business for Mr J Miah. Fines had been issued to Mr J Miah for the illegal employment of immigrants in the past. A payment plan was in place for the payment of these fines but Mr Smyth believed that payment was likely to come from the business.

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Mr Smyth expanded by pointing out that Mr M Miah had gained his experience in working for his father. He believed that Mr M Miah would have been aware that 12 illegal immigrants, some of them family members, had worked for the business. Mr Smyth felt that the employment of illegal immigrants remained a current concern. He was not confident that these concerns would be removed by transferring the premises licence to Mr M Miah or by varying the premises licence to specify Mr M Miah as DPS.

### Comments by Applicant

Mr Payne referred to the objections of TVP. Firstly the experience of Mr M Miah as DPS. Mr M Miah met the criteria of the Licensing Act. He was over 18 and held no relevant convictions. Mr M Miah was therefore able to trade from the premises.

Secondly, the exceptional circumstances highlighted by Thames Valley Police did not apply. There was no evidence that conditions had been breached and no evidence had been provided that Mr M Miah had employed people illegally.

Approval of the two applicants would enable the business to move forward. If they were refused then the premise licence holder and the DPS would remain as Mr J Miah.

Lessons had been learnt from the mistakes of the past and mitigating measures had been implemented as described.

The Sub-Committee retired at 2.10pm to make its decision.

## DECISIONS

### Application 18/01433/LQN

Having taken the written and oral representations into account, the Licensing Sub-Committee **RESOLVED** that Application 18/01433/LQN be granted.

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.

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: Mr. Payne (Licensing Lawyers), Mr. Mouadjul Miah and Mr. Jamshed Miah;
2. for a Responsible Authority (Thames Valley Police): Mr. Gary Clarke and Mr. Declan Smyth

### Decision

Having taken those representations into account, the Licensing Sub-Committee **RESOLVED** that Application **18/01433/LQN** be granted and the Premises Licence be varied accordingly.

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### 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, no additional documentary evidence had been submitted by the Responsible Authority, Thames Valley Police, since their objection dated 14<sup>th</sup> October 2018 either before or at the hearing. As a consequence, the Licensing Sub-Committee felt that there was a lack of evidence relating to this period and it was only in a position to consider oral representations made by the parties at the hearing.

The Licensing Sub-Committee noted that Mr. Mouadjul Miah's application to transfer the premises licence was to be with immediate effect pursuant to sections 42 and 43 of the Licensing Act 2003. As a consequence, Mr. Mouadjul Miah was to be treated as the premises licence holder from the 8<sup>th</sup> October 2018, which was the date the application was received by the Council. The application then needed to be determined by the Licensing Sub-Committee at a hearing in light of the objection made by the Responsible Authority, Thames Valley Police.

The Licensing Sub-Committee had regard to the basis upon which the Responsible Authority, Thames Valley Police, objected to the transfer of the Premises Licence, and considered that there were exceptional circumstances to do so. This was due to the direct link and father-son relationship between Mr. Jamshed Miah and Mr. Mouadjul Miah. Of particular concern was the link between Mr. Mouadjul Miah's involvement in the business when 12 illegal immigrants were found at the three Licensed Premises at Miah's of Spencers Wood, Miah's of Pangbourne and Miah's of Wokingham Road during 2018.

The Licensing Sub-Committee acknowledged the seriousness of the evidence of illegal working at the three licensed premises during 2018 whilst Mr. Jamshed Miah had been the premises licence holder. Despite this, however, the Licensing Sub-Committee had regard to the fact no additional documentary evidence had been provided by the Responsible Authority in the last 12 months to support its position that the crime and prevention objective would be undermined. There was a dispute in the evidence during the hearing as to whether there was an illegal worker found by the Home Office during an inspection at the premises in Spencers Wood during August 2019 and since Mr. Mouadjul Miah had become the manager of the premises in October 2018. Mr. Mouadjul Miah's position was that the individual had been arrested for a different reason and Thames Valley Police had provided no documentary evidence in this regard. In addition, the Licensing Sub-Committee also considered the fact that none of the licensing conditions attached to the premises licence had been breached during the visit undertaken by Thames Valley Police on the 11<sup>th</sup> October 2019. In addition, no evidence of illegal working had been found but rather, the relevant documentation had not been produced. The Licensing Sub-Committee 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's right to work in his possession.

The Licensing Sub-Committee further noted the representations received by the Applicant relating to the last twelve months included measures which had been taken by Mr. Mouadjul Miah to promote the licensing objectives which included the training of staff and the employment of a licensing consultant. The Applicant, through his representative, also referred to a statutory declaration completed by Mr. Jamshed Miah which confirmed that he no longer had any involvement with the premises.

The Licensing Sub-Committee had regard to the Home Office Revised Guidance particularly paragraphs 8.101 and 8.102.

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For the reasons outlined above, the Licensing Sub-Committee did not consider that it had sufficient evidence to find that there were exceptional circumstances that would mean the granting of the application to transfer the premises licence to Mr. Mouadjul Miah would undermine the crime prevention objective. As a consequence, the Licensing Sub-Committee did not consider that it was appropriate to reject the application and resolved to determine to grant the transfer of the Premises Licence to Mr. Mouadjul Miah and the Premises Licence be varied accordingly.

### **Application 18/01434/LQN**

Having taken the written and oral representations into account, the Licensing Sub-Committee **RESOLVED** that Application 18/01434/LQN be granted.

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.

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

1. The Applicant: Mr. Payne (Licensing Lawyers), Mr. Mouadjul Miah and Mr. Jamshed Miah
2. The Objector: Thames Valley Police (Mr. Gary Clarke and Mr. Declan Smyth)

### **Decision**

Having taken those representations into account, the Licensing Sub-Committee **RESOLVED** that Application **18/01434/LQN** be granted and the Premises Licence to be varied with immediate effect.

### **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, no additional documentary evidence had been submitted by the Responsible Authority, Thames Valley Police, since their objection dated 22<sup>nd</sup> October 2018 either before or at the hearing. As a consequence, the Licensing Sub-Committee felt that there was a lack of evidence relating to this period and it was only in a position to consider oral representations made by the parties at the hearing.

The Licensing Sub-Committee noted that Mr. Mouadjul Miah's application to name himself as the designated premises supervisor was with immediate effect pursuant to sections 37 and 38 of the Licensing Act 2003. As a consequence, Mr. Mouadjul Miah was to be treated as the designated premises supervisor from the 8<sup>th</sup> October 2018, which was the date the application was received by the Council. The application then needed to be determined by the Licensing Sub-Committee hearing in light of the objection submitted by the Responsible Authority, Thames Valley Police.

The Licensing Sub-Committee had regard to the basis upon which the Responsible Authority, Thames Valley Police, were objecting to Mr. Mouadjul Miah being named as the designated premises supervisor and considered that there were exceptional circumstances to do so. This was due to the direct link and father-son relationship

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between Mr. Jamshed Miah and Mr. Mouadjul Miah and the ongoing concerns which will likely undermine the crime prevention objective.

The Licensing Sub-Committee acknowledged the seriousness of the evidence of illegal working at the three licensed premises during 2018 whilst Mr. Jamshed Miah had been the premises licence holder. Despite this, however, the Licensing Sub-Committee had regard to the fact no additional documentary evidence had been provided by the Responsible Authority in the last 12 months to support its position that the crime and prevention objective would be undermined. There was a dispute in the evidence during the hearing as to whether there was an illegal worker found by the Home Office during an inspection at the premises in Spencers Wood during August 2019 and since Mr. Mouadjul Miah had become the manager of the premises in October 2018. Mr. Mouadjul Miah's position was that the individual had been arrested for a different reason and Thames Valley Police had provided no documentary evidence in this regard. In addition, the Licensing Sub-Committee considered that none of the licensing conditions attached to the premises licence had been breached during the visit undertaken by Thames Valley Police on the 11<sup>th</sup> October 2019 and no evidence of illegal working had been found, but rather, the relevant documentation had not been produced. The Licensing Sub-Committee 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.

The Licensing Sub-Committee further noted the representations received by the Applicant relating to the last twelve months included measures which had been taken by Mr. Mouadjul Miah to promote the licensing objectives which included the training of staff and the employment of a licensing consultant. The Applicant, through his representative, also referred to a statutory declaration completed by Mr. Jamshed Miah which confirmed that he no longer had any involvement with the premises.

The Licensing Sub-Committee had regard to the Home Office Revised Guidance particularly paragraphs 4.34 to 4.41.

For the reasons outlined above, the Licensing Sub-Committee did not consider that it had sufficient evidence to find that there were exceptional circumstances that would mean the granting of the application to name Mr. Mouadjul Miah as designated premises supervisor would undermine the crime prevention objective. As a consequence, the Licensing Sub-Committee resolved to determine to grant the application and therefore Mr. Mouadjul Miah's name did not need to be removed as Designated Premises Supervisor and the Premises Licence needed to be varied with immediate effect.

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

The minute for Agenda Item 3(2) concerning Licensing Application 18/01434/LQN in respect of an application to vary the premises licence to specify an individual as designated premises supervisor for Miah's of Pangbourne was contained within the minute for Agenda Item 3(1) – 18/01433/LQN.

*(The meeting commenced at 1.30pm and closed at 2.10pm)*

**Name** .....

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

**Name** .....

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

**Name** .....

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