

West Berkshire Council

**Application for the review of a premises licence or club premises certificate under the
Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
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that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
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I Simon Wheeler, on behalf of the Chief Constable of Thames Valley Police

(Insert name of applicant)

**apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the
premises described in part 1 below:**

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description	
The Vault Club 4A The Kennet Centre	
Post town Newbury	Post code (if known) RG14 5EN

Name of premises licence holder or club holding club premises certificate (if known)
Big Fish Clubs UK Ltd

Number of premises licence or club premises certificate (if known)
17/01614/LQN

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible
authority (please read guidance note 1, and complete (A)
or (B) below)

☐

2) a responsible authority (please complete (C) below)

☒

3) a member of the club to which this application relates
(please complete (A) below)

☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

☐

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Thames Valley Police C/O Reading/ West Berkshire Licensing Dept Reading Police Station Castle Street Reading RG1 7TH
Telephone number (if any) 101
E-mail address (optional) Licensing@thamesvalley.pnn.police.uk

This application to review relates to the following licensing objective(s)

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

Please tick one or more boxes ✓

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>

Please state the ground(s) for review (please read guidance note 2)

Thames Valley Police (TVP) as a responsible authority under the Licensing Act 2003 and under the objectives of prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm make an application for the review of Premises Licence No. 17/01614/LQN The Vault Club, 4A The Kennet Centre Newbury, Berkshire, RG14 5EN.

The Vault Club premises licence was issued on 12th January 2018 after lengthy consultations with Thames Valley Police to establish a suitable operating schedule that contained what were hoped to be sufficient conditions to ensure that the premises once operated would promote and not undermine the licensing objectives.

Historically the site suffered numerous incidents which specifically negatively impacted the prevention of crime and disorder licensing objective and it is our current understanding that it was the impending review of the premises licence which prompted the previous premises licence holders to withdraw the licence and vacate the property.

Since the licence has been in operation a number of incidents have occurred at the premises ranging from public order incidents, assaults, vulnerability of customers, inconsistencies in door supervision and concerns regarding under 18 and boxing events.

These concerns have been compounded by two extremely poor licensing inspections which have shown inherent failures to comply with licensing conditions in relation to areas such as quality and provision of CCTV and usage of the Newbury radio system and ID scan equipment, as well as the majority of other conditions contained within the licence.

These poor inspection results and subsequent identified licence breaches have led to the issuing of two Section 19 closure notices and letters to the premises licence holders neither which have not led to any improvements at the premises or any greater compliance.

On 22nd February 2019 Thames Valley Police arranged a performance meeting to be held with the premises licence holder to address our concerns, however the premises licence holder or any other representative failed to turn up to the meeting.

Thames Valley Police are of the opinion that this premises licence is failing to promote the four licensing objectives and that a review of the premises licence is required in order to address serious concerns surrounding the management of the venue and failure to comply with the conditions outlined within the operating schedule, as numerous interventions to this point have failed to address these serious concerns.

Please provide as much information as possible to support the application (please read guidance note 3)

The following chronology refers in relation to this premises licence review:-

12/01/2018 – Assault occurred on the dancefloor whereby a male was punched and apprehended a black eye. This incident was NOT reported to Police on the night and the offender was ejected without their details being recorded. Officers note the investigation failed because CCTV could not be produced by staff and in any case was of inadequate quality. **(SEE APPENDIX 1 & 2a 2&b)**

13/01/2018 – Report from PS Chapman reporting that initially a door book was not available on site and later on it was illegible once available. Also references poor queuing processes. **(SEE APPENDIX 3)**

19/01/2018 – Report from Officer 3947 Peel in relation to a serious sexual offence committed against a female whom had left the club in an extremely intoxicated and vulnerable condition having been ejected from the premises due to intoxication. Concerns were raised at the time as to the amount of alcohol served to the female whom had also preloaded alcohol prior to her arrival. The incident also raises concerns over the duty of care of staff allowing her to be removed to a nearby bus stop without ongoing supervision. **(SEE APPENDIX 4)**

26/01/2018 – Joint Thames Valley Police/ West Berkshire Council inspection of the premises took place whereby a number of key licence conditions were discovered to have been in breach. A Section 19 closure notice was issued for CCTV rectification. **(SEE APPENDIX 5 & 6)**

04/02/2018 – Report from PC Thomas detailing that a male had disclosed to him that a member of the door team had stated that he would let someone into the club after the 0130 last entry time if they paid him £20 to do it. **(SEE APPENDIX 7)**

10/02/2018 – Report from PC Burford referencing an incident whereby door staff had been bitten by a male. On this occasion the door personnel performed well. **(SEE APPENDIX 8)**

11/02/2019 – Report from PC Hill detailing an allegation that a door supervisor punched her. Police were able to meet the victim and confirm that she had bruising to her face however no further complaint was made. **(SEE APPENDIX 9)**

28/02/2018 – Letter to the Designated Premises Supervisor from Andy Dean (TVP) regarding an intention to further visit the premises on 8th March 2018. **(SEE APPENDIX 10)**

03/03/2018 – Report from PC Hanson stating that Police were required to attend the premises to deal with a male committing public order offences. The officer notes that the door staff appeared overly aggressive and unprofessional in their mannerisms, by swearing and smoking. **(SEE APPENDIX 11)**

04/03/2018 – Letter to the DPS from PC Wheeler outlining the breaches of conditions discovered during the visit on 26/01/2018. **(SEE APPENDIX 12)**

10/03/2018 – Report from PC Bull that Police were requested to attend for a detained male that had assaulted the manager. However when Police arrived they were informed that the assailant had been let go because the manager had told them he did not want Police at his premises. **(SEE APPENDIX 13)**

18/03/2018 – Report from PC Burford detailing that staff at the premises had detained a drunk male whom had assaulted two females and had threatened to fight the door staff. **(SEE APPENDIX 14a)**

Further report from PC Hubbard-Clark detailing second incident which occurred at the same time as the first and the officers concerns regarding gaining information from within the club and difficulties surrounding the smoking area. **(SEE APPENDIX 14b)**

25/03/2018 – Report from PS Chapman stating that a door supervisor had been punched by a customer and restrained, but allowed up as soon as Police arrived causing further disorder due to him being released from restraint. The report also indicates a concern regarding the lack of available CCTV coverage of the external area and advice provided to rectify coverage. **(SEE APPENDIX 15)**

05/05/2018 – Report from PC Howard detailing a complaint from a female whom stated that having had a drink thrown over her within the premises that she was upset at the treatment she received from door supervisors who made no attempt to address the situation, and refused to provide her with their SIA badge details which she required to make a complaint. **(SEE APPENDIX 16)**

05/05/2018 – Report from PC Gawronski outlining that a male had been detained for using white powder in the toilets of the club and how door staff dealt with him in a professional manner. **(SEE APPENDIX 17)**

15/05/2018 – PC Thomas reports that staff from Vaults aided officers dealing with an aggressive and assaultive male and received praise for their efforts. **(SEE APPENDIX 18)**

01/12/2018 – Report from PC Herd stating that an unknown member of staff from Vaults confided in her that it was a known fact that large amounts of drugs were being passed and consumed within the premises. **(SEE APPENDIX 19).**

10/01/2019 – A second Section 19 Closure Notice was issued to the premises by PC Allen; this time again for failure to comply with the CCTV licence condition as well as the ID scan device not working or being used in accordance with their conditions, and a failure to utilise a town link radio. **(SEE APPENDIX 20)**

02-03/02/2019 – Report from PC Anderson providing information on a series of disorders in the town at other venues which were linked to persons whom had attended a Boxing promotion at Vaults earlier in the evening, raising concerns over the attendees at future events. **(SEE APPENDIX 21)**

09/02/2019 – Inspection carried out at the premises by PC Allen, the Officer notes that the ID scan condition was not complied with, CCTV still did not cover all licensable areas, an event plan had not been submitted for the previous Boxing event, the radio system was not in use and no training records were available. These are all breaches of condition and other concerns were also noted. **(SEE APPENDIX 22)**

13/02/2019 – Letter to Designated Premises Supervisor from PC Sowden outlining a number of condition breaches discovered during the inspection on 09/02/2019 and requesting attendance at a performance meeting on 22/02/2019. **(SEE APPENDIX 23)**

22/02/2019 – Mr Anderson failed to attend the pre-arranged performance meeting scheduled within the letter sent on 13/02/2019 by PC Sowden. **(Detailed within premises summary report)**

21/02/2019 – Report from PC Hall in relation to an under 18's night at the club, where 18 year olds were also allowed into the premises! It was confirmed that no alcohol was allowed to be sold however two children were located inside the premises in possession of small bags of drugs including Cocaine and Ketamine. The officer confirms that random searching only was taking place for this event. **(SEE APPENDIX 24)**

05/06/2019 – Chief Inspector Finch sent a letter to Mr Anderson with regards to a forthcoming boxing event. Within the letter she details the failure of the Premises Licence Holder/Designated

Premises Supervisor to notify Thames Valley Police of the event and submit a written event management plan contrary to the premises licence conditions. Chief Inspector Finch also outlines the breaches discovered by officers within the inspection earlier in the year and due to these facts objected to the event taking place as is allowed within the premises licence conditions, and with regard for public safety. **(SEE APPENDIX 25)**

15/06/2019 – The planned Boxing event was cancelled at the premises a short time before commencement.

In conclusion Thames Valley Police have taken this most serious step of applying for the review of this premises licence as clearly from the evidence above there are inherent issues in relation to non-compliance with the Licensing Act 2003 and a failure to promote the four licensing objectives.

The premises licence holders have little or no processes to ensure due diligence and it has been recorded during inspections that there is no training for staff in place, no suitable evidence of policies and procedures as required within the licence conditions, and minimal attempts have been made at any stage to rectify these concerns even after numerous interventions by the responsible authorities.

When coupling together the failure to comply with legislation, the failure to show any due diligence, the incidents of crime and disorder and disregard for the Licensing Act 2003, Thames Valley Police respectfully ask the Licensing Sub – Committee to consider the immediate revocation of the premises licence relating to The Vault Club as the only proportionate and necessary step available to prevent the further undermining of the four licensing objectives.

This recommendation has been made having precluded the other steps available to the Licensing Sub-Committee for the following reasons:

- **the modification of the conditions of the premises licence;**

Thames Valley Police are of the opinion that the conditions on the licence are already suitable to promote the licensing objectives and they were devised specifically for this premises. However it is a failure of the premises licence holder to ensure that these conditions are complied with and there are no assurances available that any further conditions shall be implemented or adhered too.

- **the exclusion of a licensable activity from the scope of the licence;**

The only licensable activity if excluded which may impact this premises licence would be the removal of the sale of alcohol and in this would in effect have the same effect as the revocation of the premises licence on a business such as this.

- **the removal of the designated premises supervisor from the licence;**

Mr Anderson is also the owner and sole director of the premise licence holders company as well as the DPS and therefore his removal as DPS would not ensure any improvements are made as he shall remain in control of the business as the premises licence holder.

- **the suspension of the licence for a period not exceeding 3 months; and**

This may be an option that the licensing sub-committee consider, however this option can be used when improvements are expected and thus require time to be implemented.

Unfortunately Thames Valley Police do not believe that this option is suitable in that there is no guarantee when considering the premises previous history that any improvements shall be made or

indeed adhered to in the long term.

If however this option was to be considered by the Sub-Committee as reasonable and proportionate we would ask that a caveat be added that the premises should not re-open until an inspection had been completed and it could be determined that ALL conditions on the licence were compliant.

Thames Valley Police would also like to highlight the relevant sections within the current secretary of state's Section 182 guidance, and West Berkshire Councils Statement of Licensing Policy which we believe are relevant to our outlined concerns at this premises and support this review process:

Secretary of States Section 182 Guidance

10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. **Failure to comply with any condition attached to a licence or certificate is a criminal offence**, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, **it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review.** Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- **suspend the licence for a period not exceeding three months;**
- **revoke the licence.**

11.20 In deciding which of these powers to invoke, **it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify.** The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21 For example, **licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.**

11.22 **Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an**

inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

West Berkshire Statement of Licensing policy

2.1 The Council is the Licensing Authority under the Act and is responsible for granting premises licences, club premises certificates, personal licences and acknowledging temporary event notices in the district. **The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives.**

2.7 The Licensing Authority recognises that conditions attached to various authorisations will be focussed on matters which are within the control of the licence holders. **Conditions shall be proportionate and appropriate to achieve the promotion of the licensing objectives, and shall be tailored to suit the circumstances and premises.**

4.1 All applicants for the grant or variation of a premises licence or club premises certificate are required to provide an operating schedule as part of their application. This is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. **The Council expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives. This should follow a thorough risk assessment relating to the specific premises and licensable activities proposed to take place.**

4.2 **Applicants are strongly recommended to discuss their operating schedule with the responsible authorities prior to submitting the application.** The Licensing Team can assist in co-ordinating this process.

5.1 **The Licensing Authority is committed to reducing crime and disorder to improve the quality of life for the people of West Berkshire. Good management and practice procedures in licensed premises can make an important contribution to lessening the impact that consumption of alcohol can have on crime and disorder.** The Licensing Authority and Thames Valley Police through the Building Communities Together Partnership will regularly monitor and review crime statistics within the district and their association with alcohol. When applying conditions, the Council will be mindful of the local Community Safety Strategy.

5.2 Licensees are encouraged to work in partnership with a local Pubwatch scheme to form strategies for actively preventing crime and disorder issues. This scheme encourages the sharing of information and seeks to address matters such as underage sales, drunkenness, illegal drug use and anti-social behaviour.

5.3 Applicants will be **expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and event.**

Licensing Objective 4: Protection of Children from Harm

8.1 This objective includes the protection of children from moral, psychological and physical harm. The applicant should initially identify any particular issues (having regard to their particular type of premises and/or activities) which are likely to cause concern in relation to children. **Applicants will be expected to consider the risk of children being exposed to alcohol, drugs, gambling, activities of an adult and/or sexual nature and exposure to excessive noise or incidents of violence and disorder. Such steps as are required to deal with these identified concerns should be included within the applicant's operating schedule.**

8.6 Applicants are required, where appropriate, to set out in their operating schedule the arrangements they have in place to prevent the sale of alcohol and age restricted items to children. The Council expects all applicants to apply a Challenge 25 policy in respect of age restricted items. Where such a policy is not proposed within the operating schedule, it is expected that the applicant provides justification as to why such a policy is not required. The Licensing Authority recommends use of any of the following as an acceptable proof of age:

- (a) Passport
- (b) Photocard driving licence issued in the European Union
- (c) Proof of Age Standards Scheme Card (PASS)
- (d) Official ID card issued by HM Forces or by a European Union country bearing a photo and date of birth of holder.

Consideration should also be given to training (including refresher training) for staff, and records to evidence this training. In addition there should be means of recording challenges and/or refusals relating to potential sales of alcohol to underage persons.

15.1 A critical element of the proper control of licensable activity and a premises where such activity is provided is good management. The Council encourages all licence holders to consider what skills and competencies are required for the safe delivery of regulated activities and secure appropriately trained staff.

15.2 Within all licensed premises, whether or not alcohol is to be sold, the Council will expect there to be proper management arrangements in place which will ensure that there is an appropriate number of responsible, trained/instructed persons at the premises to ensure the proper management of the premises and of the activities taking place, as well as adherence to all statutory duties and the terms and conditions of the premises licence.

16.3 The Council undertakes proactive risk-based inspections of all licensed premises to ensure continued promotion of the licensing objectives and compliance with licence conditions. **Premises that consistently fail inspections may be subject to a licence review or other enforcement action.** Where one-off events are taking place, the Licensing Authority may also carry out inspections to ensure promotion of the licensing objectives.

Furthermore Thames Valley Police recommend that when considering what enforcement action to take, the Authority will always consider what is the most appropriate and proportionate step to promote the licensing objectives. Thames Valley Police suggest that the authority is not required to wait for offences to occur before deciding it needs to take appropriate action. Case law – notably *East Lindsey District Council v Abu Hanif* – states that the promotion of the licensing objectives requires a prospective consideration of what is warranted in the public interest having regard to the twin considerations of prevention and deterrence and respectfully ask that the licensing Sub-Committee take cognisance of this factor with regards to this review application.

A full transcript of this Case Law is outlined below:

QBD, ADMINISTRATIVE COURT

Neutral Citation Number: [2016] EWHC 1265 (Admin)

CO/345/2016

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Thursday, 14 April 2016

B e f o r e:

MR JUSTICE JAY

Between:

EAST LINDSEY DISTRICT COUNCIL

Appellant

v

ABU HANIF

(TRADING AS ZARA'S RESTAURANT AND TAKEAWAY)

Computer- Aided Transcript of the Stenograph Notes of

WordWave International Limited trading as DTI

165 Fleet Street London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7404 1424

(Official Shorthand Writers to the Court)

Mr P Kolvin QC & Mr D Dadds (instructed by David Dadds LLP) appeared on behalf of the **Appellant**

The **Respondent** did not appear and was not represented

J U D G M E N T

(Approved)

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1. MR JUSTICE JAY: This is an appeal by way of case stated from the decision of the Lincoln Magistrates' Court, District Judge Veits, given on 23 June 2015, whereby he allowed an appeal from the revocation of a premises licence by the licensing authority.
2. The appellant, the East Lindsey District Council, is the licensing authority. The Magistrates' Court in the usual way is not a party to these proceedings. The

respondent, Mr Abu Hanif, trading as Zara's Restaurant and Takeaway, is the licence holder. He through a licensing consultant has submitted correspondence making various limited points, but indicating that he would not be taking any part in these proceedings.

3. The premises in question are Zara's Restaurant and Takeaway situated in North Summercoates on the Lincolnshire coast. They are licensed to sell alcohol ancillary to the supply of food. The restaurant is owned and managed by the licensee, Mr Hanif. On 29 April 2014, the premises were the subject of a joint visit by the police and immigration officers, and it was discovered that Mr Miah was working in the kitchen as a chef. It was common ground that Mr Miah had no current entitlement to remain in the UK, let alone to work. I was told that he arrived here illegally some years ago. Furthermore, it was also accepted by the respondent that he (i) employed Mr Miah without paperwork showing a right to work in the United Kingdom; (ii) paid Mr Miah cash in hand; (iii) paid Mr Miah less than the minimum wage; (iv) did not keep or maintain PAYE records; (v) purported to deduct tax from Mr Miah's salary; and (vi) did not account to HMRC for the tax deducted.
4. The police then applied for a review of the respondent's licence under section 51 of the Licensing Act 2003 and the matter came before the appellant's subcommittee on 30 June 2014. The subcommittee decided to revoke the respondent's licence. Its reasons were as follows:
5. "The subcommittee were satisfied that Mr Hanif did not take the appropriate checks of staff members having knowledge that there were problems previously at the other premises with overstayers, and that he continued to allow staff to work at Zara's restaurant without making appropriate checks.
6. The subcommittee were satisfied that Mr Hanif had not undertaken the relevant checks to ensure the employee concerned was eligible to work in the United Kingdom. Instead of not allowing employees to work if they had not provided the correct documentation he allowed them to work and paid cash in hand. With all this in mind the subcommittee were satisfied that Mr Hanif had knowingly employed person/s unlawfully in the United Kingdom.
7. The subcommittee considered the evidence by Mr Kheng on behalf of Mr Hanif and the Home Office section 182 Guidance to Licensing Authorities. The subcommittee were of the view that the premises licence should be revoked and that revocation was an appropriate step with a view to promoting the crime prevention licensing objective."
8. The respondent then appealed to the Magistrates' Court. There was a hearing

on 27 March 2015, and on 23 June the district judge decided to allow the respondent's appeal. On 1 September 2015, the district judge determined the issue of costs and on 7 January 2016 he stated the case. The appeal to the district judge was de novo, but he accepted that he could only allow the appeal if the subcommittee's decision was "wrong", the burden being on the appellant before him to establish that.

9. Looking now at the stated case, the district judge noted that the respondent had received a civil penalty for employing an illegal worker under section 15 of the Immigration, Asylum and Nationality Act 2006. An immigration officer gave evidence to the effect that although by virtue of section 21 a criminal offence was committed, such proceedings were rarely brought. The district judge also noted that the police and the Council's licensing officer were no longer saying that the respondent was a serial offender, but a redacted report which was placed before the subcommittee still gave the impression that he "was in a much worse position than he actually was". As for the failure to pay the minimum wage, the district judge said this:

A. "In his evidence before me Mr Hanif accepted that he had not paid the minimum wage and this in itself can be a criminal offence. I found that this was not the main basis of the subcommittee's decision however and again there was no evidence that he had been reported for that alleged offence. It would appear from their reasons that the subcommittee used the evidence of paying cash in hand as justification for the finding that he knowingly employed Mr Miah. The prosecuting authority however appear to have taken a different view in offering the civil penalty."

10. The district judge's core reasoning was that no crime had been committed. As he put it:

A. "It appeared to me that no crime had been committed as a result of the visit to the premises in April of last year. A civil penalty had been imposed rather than prosecution for the section 21 offence and no other crime had been reported in relation to not paying the minimum wage."

11. In the district judge's view, the crime prevention objective was not engaged.
12. The district judge also criticised the subcommittee for adopting an inconsistent approach because in other similar cases only warnings were issued. Finally, he considered that the subcommittee may have been influenced by comments in the police report, leading them to believe that they were dealing with a serial offender.
13. At the conclusion of the stated case, the district judge posed two questions for my determination. I will address these at the end of my judgment.
14. I was taken by Mr Philip Kolvin QC to various provisions of the Licensing

Act 2003 as amended. Under section 4(1) and (2) a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives, which include "the prevention of crime and disorder". The provisions dealing with the review application brought by the police are contained in sections 51 and 52. Under section 52(3), the licensing authority (and on appeal the Magistrates' Court):

A. "... must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives."

15. The epithet "appropriate" was introduced by amendment in 2011. Previously the test had been stricter. In my judgment, it imports by necessary implication the concepts of proportionality and relevance.

16. Mr Kolvin submitted that the district judge erred in a number of respects. First, he wrongly held that, given that criminal proceedings were never brought, the crime prevention objective (see section 4(2)) was not engaged. The statute is concerned with the prevention rather than the fact of crime. Secondly, and in any event, the interested party had committed criminal offences in relation to tax evasion, the employment of an illegal worker, and employing an individual at remuneration below the minimum wage. As for the employment of an illegal worker, Mr Kolvin accepted that this requires knowledge on the part of the employer, and he also accepted that it is not altogether clear whether the district judge found as a fact that the respondent possessed the requisite knowledge. However, the core question is the promotion of the licensing objectives, not the fact of anterior criminal activity, and in this regard a deterrence approach is appropriate.

17. Thirdly, Mr Kolvin submitted that there was no evidence of an inconsistent approach by the subcommittee in giving warnings in some cases because all cases turn on their own facts. Finally, Mr Kolvin submitted that there was no basis for the district judge's conclusion that the subcommittee may have been influenced by a suggestion that the respondent was a serial offender.

18. I accept Mr Kolvin's submissions. In my view the district judge clearly erred. The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder.

This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. The district judge's erroneous analysis of the law precluded any proper consideration of that issue. In any event, I agree with Mr Kolvin that criminal convictions are not

required.

19. To the extent that the analysis must be retrospective, the issue is whether, in the opinion of the relevant court seized of the appeal, criminal offences have been committed. In the instant case they clearly had been: in relation to tax evasion (see the common law offence of cheating the Revenue and the offence of fraudulent evasion of tax contrary to section 106A of the Taxes and Management Act 1970); and the employment of Mr Miah at remuneration below the minimum wage (see section 31 of the National Minimum Wage Act 1998). Moreover, given the evidence that Mr Miah never provided the relevant paperwork, notwithstanding apparent requests, the obvious inference to be drawn is that the respondent well knew that he could not, and that no tax code and National Insurance number had been issued. The corollary inference in my judgment is that the respondent well knew that Mr Miah could not provide the relevant paperwork because he was here illegally.
20. I also accept Mr Kolvin's submission that each case must turn on its own facts. As a matter of law, unless it could be said that some sort of estoppel or related abuse of process arose in the light of warnings given in other cases, the alleged inconsistent approach led nowhere. In my judgment, it could not be so said.
21. Finally, I agree with Mr Kolvin that there is nothing in the point that the subcommittee could have been misled about the interested party being a serial offender. The point that the subcommittee was making was the fact that the respondent had worked at premises where illegal workers were also employed meant that he should have been vigilant to the issue.
22. Thus the answer to the district judge's two questions are as follows:
 - A. Q. "Was I correct to conclude that the crime prevention objective was not engaged as no crimes had been proceeded with, the appellant only receiving a civil penalty?"
 - B. No.
 - C. Q. "Was I correct in concluding that the respondent had been inconsistent in similar decisions in not revoking the licence [sic]?"
 - D. No.
23. Having identified errors of law in the district judge's decision, the next issue which arises is whether I should remit this case for determination in the light of my ruling or whether I have sufficient material to decide the issue for myself. I should only adopt the latter course if satisfied that the issue is so

obvious that no useful purpose would be served by remission. I am so satisfied. Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked. Another way of putting the matter is that the district judge had no proper basis for overturning the subcommittee's assessment of the merits.

24. It follows in my judgment that the only conclusion open to the district judge in the present case was to uphold the revocation of the respondent's licence. This appeal must be allowed and the respondent's licence must be revoked.
25. MR KOLVIN: My Lord, I'm very grateful. Can I deal with the question of costs, both here and below.
26. MR JUSTICE JAY: Yes.
27. MR KOLVIN: Should I start with here.
28. MR JUSTICE JAY: Yes.
29. MR KOLVIN: My Lord, we would ask for the costs before this court. I just want to pray in aid four very brief points. The first is the result. The second is that the district judge's approach was expressly urged on him by the respondent's legal team. Thirdly, that the respondent was expressly urged to concede this appeal to stop costs running, he was given that opportunity at pages 42 and 43 of the bundle. Fourthly, perhaps a little bit tugging at the heart strings, but there's no reason why the Council Tax payers of East Lindsey should bear the cost of establishing what has been established in this court. So we would ask for the costs up here.
30. There is a schedule and the schedule has been served upon Mr Hanif by letter dated 16 March of 2016. I don't know whether the schedule has found its way to my Lord, if not I can hand up a copy.
31. MR JUSTICE JAY: It has.
32. MR KOLVIN: It has. My Lord, I can see that VAT has been added on. It doesn't need to be because of course the Council can retrieve the VAT, so my application is for £16,185. I know there's not a lot of explanation around my fee, but it was taken on a single fee for all work involved in relation to the case stated; advice, the skeleton argument and attendance today, so it's one single - -

33. MR JUSTICE JAY: What about your junior's fees?
34. MR KOLVIN: My learned junior is also my instructing solicitor, he wears two hats.
35. MR JUSTICE JAY: I see.
36. MR KOLVIN: He has his own firm which is Dadds LLP, and he is also a member of the bar, so although he has appeared as my junior, his fee is wrapped up in the solicitors' fees set out in the schedule.
37. MR JUSTICE JAY: Okay. What about the costs below?
38. MR KOLVIN: My Lord, I'm just trying to ascertain what the position is.
39. MR JUSTICE JAY: I thought there was no order for costs below.
40. MR KOLVIN: There was no order for costs below, that was on the basis that the appeal had been allowed. The situation in relation to costs of licensing appeals are set out in section 181 of the Act, which enables the court to make such order as it thinks fit. Normally when appeals are dismissed there is no real question about it, costs follow the event. When appeals are allowed, some further considerations come into play, which are expressed by the Master of the Rolls in a case which you may have come across called City of Bradford v Booth, which is the case where the Master of the Rolls said that local authorities shouldn't be put off from trying to make honest and reasonable decisions in the public interest. And so one has to take account additionally of the means of the parties and their conduct in relation to the dispute, but in this case of course the appeal has now been dismissed, and so we would say that the ordinary rule is that the costs should follow the event, the appeal having failed. I'm just trying to ascertain whether schedules were ever served below, in the light of the way the case came out. **(Pause)**
41. My Lord, I'm really sorry that we don't actually have the schedule here, apparently it was £15,000. If you were minded to order costs below the options are either I suppose to wait and we will have the thing emailed up, or to say, "Look, it was below, it's a little bit more complex, they should be assessed if not agreed."
42. MR JUSTICE JAY: This is going to wipe him out, isn't it?
43. MR KOLVIN: Well he has already said, I have to say, I'm just telling you frankly what I've been told this morning, that when the bundles and the schedules were served on him, he had clearly read them, but he said, "If you win in the High Court and get costs against me, then I'm just going to declare

myself bankrupt." So there may well be a bit of football(?) about this, but nonetheless it was his appeal, his team raised a point which in retrospect was very surprising, and caused an awful lot of costs to be incurred.

44. MR JUSTICE JAY: Yes. Well I am going to assess the costs here in the round figure of £15,000.
45. MR KOLVIN: Thank you.
46. MR JUSTICE JAY: If there was a schedule, which you tell me there was, below, it is proportionate that I assess those costs rather than put you to the trouble of a detailed assessment, so if you could have that emailed to my clerk in due course, I will assess the costs below.
47. MR KOLVIN: Thank you, my Lord.
48. MR JUSTICE JAY: On the basis of that schedule.
49. MR KOLVIN: We're not trying to be too ambitious, but we would like to see what we can - -
50. MR JUSTICE JAY: I'll take a broad brush approach to that.
51. MR KOLVIN: Thank you.
52. My Lord, the only other thing to mention is that this isn't the only case which is kicking around the east of England where licensing subcommittees are being urged to take no action because there has been no prosecution in these immigration cases. Although I appreciate that this is hardly stellar law making, it's an application of pretty well established legal principles to the facts, I'm asking whether my Lord would be minded to certify this so that we can adduce the authority in other cases, because it's a clear statement of the law that there doesn't need to have been a prosecution. So with the practice direction in mind, would my Lord be minded to - -
53. MR JUSTICE JAY: Just remind me of the practice direction.
54. MR KOLVIN: Yes, can I hand it up?
55. MR JUSTICE JAY: Yes. **(Handed)**
56. MR KOLVIN: If Mr Hanif had come I wouldn't need to make the application. It's paragraph 6.1. The judgment has to clearly indicate that it purports to establish a new principle or extends the present law and that has to take the

form of an express statement to that effect, and then 6.2 says what categories of judgment we're dealing with, which include applications attended by one party only.

57. So that's the situation we're in. In reality these judgments get around anyway, because we're dealing with administrative tribunals and not courts, but sometimes the point is taken, "Ah yes, but the court didn't certify".
58. MR JUSTICE JAY: But where's the new principle I've established?
59. MR KOLVIN: My Lord, what you have said clearly, which hasn't been said before, by dint of the fact that not many licensing cases reach the lofty heights of this building, is that there does not need to have been a prosecution in order for the crime to have - -
60. MR JUSTICE JAY: Oh, I see. Well that's so obvious it almost goes without saying, that's why it hasn't been said before.
61. MR KOLVIN: My Lord, it was obvious to everyone except the district judge, the appellant and other licensees in the east of England.
62. MR JUSTICE JAY: Okay.
63. In terms of the logistics, if you want a copy of the judgment, don't you have to pay for it?
64. MR KOLVIN: We may have to, and we would be obviously very pleased to do so.
65. MR JUSTICE JAY: Because I'm not sure that all judgments are, in the Administrative Court, they're not all transcribed and published.
66. MR KOLVIN: That is correct, and I have no doubt that my client would be - this isn't a matter about the costs of the judgment.
67. MR JUSTICE JAY: No, fortunately it doesn't cost that much. But I will give the certification. I have never been asked to do so before, I must confess.
68. MR KOLVIN: Yes.
69. MR JUSTICE JAY: Because these cases are referred to almost willy nilly, if they're available on Lawtel or wherever.

70. MR KOLVIN: Yes, they are.
71. MR JUSTICE JAY: Then they're just provided.
72. MR KOLVIN: They get into the textbooks and they - -
73. MR JUSTICE JAY: No- one objects.
74. MR KOLVIN: Yes. It has happened once before, in relation to the meaning of the Court of Appeal judgment in Hope and Glory, and Lindblom J, as he then was, was asked repeatedly would he certify in relation to the meaning of Hope and Glory, which is an important test, and he was pretty engaged in the practice direction. But since then that judgment, there's always an argument in court about whether it can be cited or not. The difference between licensing and some other fields of law is that very few cases reach here, so when they do, the judgments of High Court judges are gold dust.
75. MR JUSTICE JAY: Yes, well I'm happy to make the certification.
76. MR KOLVIN: Thank you very much indeed.
77. MR JUSTICE JAY: We wouldn't want this point to be taken again successfully.
78. MR KOLVIN: No.
79. MR JUSTICE JAY: Now as a matter of courtesy, is the judgment, once available, sent to the district judge, or is it something that I should do informally?
80. MR KOLVIN: I don't know, my Lord, what the normal practice is. I don't think that I have previously been on a legal team which has sent judgments, but we're very happy to undertake to do so.
81. MR JUSTICE JAY: Yes, I think if you're going to get a copy, obviously you're going to send it to the respondent - -
82. MR KOLVIN: Indeed.
83. MR JUSTICE JAY: - - so he can ingest it. I think you should send it to the district judge, just saying that the judge directed that out of courtesy he should see it.

84. MR KOLVIN: We're very happy to do that. Thank you very much indeed.

85. MR JUSTICE JAY: Thank you very much.

Appendices

- Appendix 1 – Occurrence 43180014912 relating to assault on 12/01/2018.
- Appendix 2 a & b – 2 x Gen 40 from PC Green relating to assault on 12/01/2018.
- Appendix 3 – Gen 40 from PS Chapman 13-14/01/2018.
- Appendix 4 – Gen 40 from Officer Peel 19/01/2016.
- Appendix 5 – Joint TVP/WBC inspection sheet completed on 26/01/2018.
- Appendix 6 – Copy of Section 19 Closure Notice issued on 26/01/2018.
- Appendix 7 – Gen 40 from PC Thomas 04/02/2018.
- Appendix 8 – Gen 40 from PC Burford 10/02/2018.
- Appendix 9 – Gen 40 from PC Hill 11/02/2018.
- Appendix 10 – Letter sent by Andy Dean (TVP) to the DPS Mr Anderson on 28/02/18.
- Appendix 11 – Gen 40 from PC Hanson 03/03/2018.
- Appendix 12 – Letter sent by PC Wheeler to the DPS on 04/03/2018.
- Appendix 13 – Gen 40 from PC Bull 10/03/2018.
- Appendix 14a – Gen 40 from PC Burford 18/03/2018.
- Appendix 14b – Gen 40 from PC Hubbard-Clark
- Appendix 15 – Gen 40 from PS Chapman 25/03/2018.
- Appendix 16 – Gen 40 from PC Howard 05/05/2018.
- Appendix 17 – Gen 40 from PC Gawronski 05/05/2018.
- Appendix 18 – Gen 40 from PC Thomas 13/05/2018.
- Appendix 19 – Gen 40 from PC Herd 01/12/2018.
- Appendix 20 – Copy of Section 19 Closure Notice issued on 10/01/2019.
- Appendix 21 – Gen 40 from PC Anderson 02-03-02/2019.
- Appendix 22 – Licensing Inspection sheet carried out by PC Allen on 09/02/2019.
- Appendix 23 – Letter sent by PC Sowden to the DPS on 13/02/2019.
- Appendix 24 – Gen 40 from PC Hall 21/02/2019.
- Appendix 25 – Letter from Chief Inspector Finch to Mr Anderson.
- Appendix 26 – TVP Licensed Premises Summary report from 12 June 2018 to 26 June 2019.
- Appendix 27 – URN list of reported incidents between January 2018 and June 2019.

Please tick ✓ yes

Have you made an application for review relating to the premises before

☐

If yes please state the date of that application

Day		Month		Year	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

If you have made representations before relating to the premises please state what they were and when you made them

Please tick ✓

yes

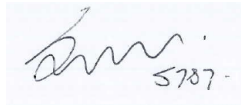
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

A handwritten signature in blue ink, appearing to be 'S. M.', with the number '5787' written below it.

Date **28/07/2019**

Capacity **Thames Valley Police (Authorised officer) Reading/West Berkshire LPA**

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.