

MINUTES

ALCOHOL, ENTERTAINMENT &
LATE NIGHT REFRESHMENT
LICENSING COMMITTEE
FRIDAY, 18 JULY 2014



COMMITTEE MEMBERS PRESENT

Councillor Pam Bosworth (Chairman)
Councillor Robert Broughton
Councillor George Chivers
Councillor Alan Davidson
Councillor Breda Griffin
Councillor Reginald Howard

Councillor Graddon Rowlands
Councillor Bob Russell (Vice-Chairman)
Councillor Susan Sandall
Councillor Mrs Jean Taylor
Councillor Frank Turner

OFFICERS

Licensing Officer (Pam Robinson, Mark Jones)
Solicitor to the Committee (John Armstrong)
Democratic Officer (Lucy Bonshor)

11. DISCLOSURE OF INTERESTS

None disclosed.

12. MINUTES OF MEETING HELD ON 4TH JULY 2014

The minutes of the meeting held on 4th July 2014 were agreed as a correct record of the decisions taken.

13. LICENSING ACT 2003: PREMISES LICENCE FOR GURKHA 91, MANOR WAY, DEEPING ST JAMES

The Committee agreed to change the format of the agenda and dealt with agenda item 5 first.

Decision:

That the Committee agree that a hearing is not necessary with regard to the application for a new premises licence for Gurkha 91, 77 Manor Way, Deeping St James.

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In the interests of accuracy one of the Committee Members clarified that 77 Manor Way was in Deeping St James, not Deepings or Market Deeping as stated in some of the paper work circulated.

The Solicitor to the Committee introduced those present and confirmed who was present from Lincolnshire Police, Sergeant Kim Enderby Licensing and Alcohol and PC Ian Figgett.

The Licensing Officer presented her report which concerned an application for a premises licence for the premises known as Gurkha 91, 77 Manor Way, Deeping St James.

The application had stated that 24hour opening was required as well as recorded music, late night refreshment and the sale of alcohol. Following contact with the applicant it had been established that the applicant had made a mistake when completing the form. He intended to play background/piped music which was not a licensable activity and the premises were to be open between 12:00hrs and 00:00hrs. An objection was received from the Police, to the application. Following discussions between the Police and the applicant conditions had been attached to the licence concerning CCTV and the restrictions on the sale of alcohol to which the applicant had agreed. Both the applicant and the police had agreed that a hearing was not necessary and it was for the Committee to also agree that a hearing was not necessary.

A Member asked if there was help for prospective applicants when completing the form. The Licensing Officer replied that there was information on the website, directing them to the responsible authorities involved in an application and also the Licensing Section were happy to make appointments with applicants to help them complete forms. Unfortunately, an application could be made from anywhere in the country and once it was submitted it was submitted.

As the applicant had agreed to the conditions asked for by the police, it was proposed, seconded and unanimously agreed that a hearing was not required.

14. LICENSING ACT 2003: REVIEW OF PREMISES LICENCE - THE BOMBAY BRASSERIE, 11 LONDON ROAD, GRANTHAM - ADJOURNED FROM MEETING HELD ON 4TH JULY 2014

Decision:

The Committee were satisfied that there was no evidence to indicate that any of the Licensing Objectives were being undermined and agreed that no further action was required. (Detailed reasons for the decision are shown at the end of these minutes)

The Solicitor to the Committee introduced those present and confirmed who was to speak in relation to the application. John Whittaker solicitor for Lincolnshire Police, Sergeant Kim Enderby Lincolnshire Police Licensing, Duncan Craig barrister on behalf of Mr Anilkumar V Patel, premises owner.

The application before the Committee was for a review of a premises licence for the premises known as Bombay Brasserie, 11 London Road, Grantham. The review had been asked for by Lincolnshire Police. The review was adjourned from the 4th July in order that the Police who had brought the review, had time to validate information submitted by the applicant shortly before the last meeting and for the applicant to provide better quality documentation if possible.

The Licensing Officer presented the reasons for the review requested by the Police and which were outlined within report CSL047. The grounds for the review were under the licensing objectives of:

- Prevention of Crime and Disorder
- Public Safety
- Protection of Children from Harm

The premises had been visited on 1st May 2014 by Lincolnshire Police Licensing and Home Office Immigration. Ten Asian males had been identified as working at the premises in front of house and the kitchen. Checks had identified one male worker was ineligible to work and was escorted from the premises. Four other males were arrested and detained as illegal workers at the premises for relevant offences under the Immigration Act 1971.

As third party names were contained within the documents before all parties the Solicitor to the Committee asked that those people be referred to as A, B, C, D and E respectively.

The Licensing Officer was asked whether a representative from the Fire Authority had been invited. The issues referred to within the report/ appendices were dealt with under different legislation however, a representative from the Fire Authority was entitled to be present at the meeting if they felt it was warranted.

The Solicitor for the Police then presented their case. Reference was made to the visit on 1st May 2014 and the men who had been found to be working illegally in the UK. It was the view of the Police that the Premises owner knowingly employed the men to work within his restaurant knowing that they were illegal workers and that this was a criminal act. The main licensing objective which the Police had brought the review was under the Prevention of Crime and Disorder. By employing these men the Premises Licence Holder had knowingly failed to comply with the law by employing illegal immigrants. The Police Solicitor then referenced parts of the Immigration Act 1971 which the Premises Licence Holder had failed to comply with by knowingly employing the men.

He then referred to the "squalid" living conditions that the men had been living in and the access to the living accommodation which had necessitated the Lincolnshire Fire and Rescue serving a Prohibition Notice on the premises. Until work had been carried out as stated within the prohibition notice the premises could not be used as accommodation. Reference was then made to

public safety, training, hygiene standards and health and safety of the illegal immigrants working in the premises. The Police Solicitor then referred to how the illegal immigrants were paid in cash and no records had been submitted concerning tax, etc.

Sergeant Kim Enderby then gave his statement of the visit to the premises on 1st May 2014 referring to the four males that had been identified as being in the UK illegally and the “squalid” living accommodation and the checks undertaken to identify who the illegal immigrants were. Mention was also made of the referral to Lincolnshire Fire Authority about the living conditions of the illegal immigrants. Sergeant Enderby was satisfied that the illegal workers had been staying in the premises for some time. The police had a video recording showing the accommodation which had been taken on the night of the visit.

Questions were put to Sergeant Enderby about the figure print technology used and whether or not a decision had been taken by the CPS to prosecute. It was stated that the issue would be dealt with by the Immigration Authorities and the Police were waiting to hear from them.

A question was asked about the company referred to by the respondent who had checked the documentation of the workers. Enquiries had been made about the company but whether they were “bona fide” had not been clarified, however, they were not on the list of Home Office approved screeners.

The barrister for Mr Patel referred to the allegations made by the police about the squalid conditions of the accommodation and how this impacted on the Licensing Objectives and he asked for the video to be played to the Committee.

An adjournment followed between 10.45am and 11.10am whilst the video recording was set up.

Relevant parts of the video concerning the accommodation were watched by all parties.

Following the showing of the video Mr Craig then made representation on behalf of Mr Patel. Mr Patel had owned a premises licence for 34 years and never had a review. Although Mr Patel had lived above the premises 15/16 years ago and it had been semi decorated, he had not been upstairs to the living accommodation for about 10 years. When he had once again taken over the business in 2011 he had made checks on the workers using the company referred to in his witness statement. He had not knowingly employed illegal immigrants to work in the business and he had made checks to the best of his ability. Since the prohibition notice had been served the accommodation above the premises had been gutted and he had employed the services of an architect to address the issues within the notice, all staff had been moved to other accommodation. It was common in the restaurant business to pay staff by cash and each received a weekly pay packet. If the alcohol licence was revoked the restaurant could still trade and people could bring their own alcohol.

The review by the police rested upon the inference that Mr Patel knowingly and with intent employed illegal immigrants. Mr Craig then read out the sections of the Immigration Act 1971 that the Police Solicitor had referred to and also Sections within the 182 guidance of the Licensing Act 2003. Each referred to the word knowing and knowingly it was his contention that Mr Patel did not knowingly employ the illegal immigrants and that he had taken reasonable steps to check that the people he employed were legitimate to the extent of employing a company to check the information he had received. Previously he had had no trouble with the police and he referred to Section 15 of the Act which concerned a civil penalty not a criminal offence. Mr Craig then referred to the witness statements and the credentials of the interpreters who had taken the statements and said that there was no way of verifying the accuracy of what had been said. He further went on to add that there was no illegality in the way the business was run and it was not unusual for people to be paid cash. He felt that the police had made misleading assumptions; Mr Patel admitted that the accommodation was not in perfect order, however it was difficult to see where public safety was an issue. The business had been run for a number of years with no concerns from any of the statutory bodies entitled to call for a review. There was no evidence to suggest that Mr Patel knew that the employees were not entitled to live or work in the UK and he asked that the Committee reject the police's application to revoke the premises licence.

Questions were then put to Mr Craig by the Police Solicitor about the company employed by Mr Patel to check the credentials of the workers, the number of days that the employees worked, how they were paid and the turnover of staff to which Mr Craig or Mr Patel responded to.

Further questions were asked to which Mr Patel responded.

The Licensing Officer then gave her closing statement and the options that were open to the Committee with regard to the review.

The Police Solicitor then gave his closing statement reminding the committee about the creditability of the translators who had recorded what they believe to be correct information, the lack of evidence submitted by Mr Patel about salary deductions and to judge whether Mr Patel was a responsible employer.

Mr Craig then gave a brief closing statement. He referred to the Home Office guidance that Mr Whittaker had quoted which had not been submitted as evidence – Mr Whittaker replied that the information was public knowledge and available widely including the Boarder Agency guidance. Mr Craig would have liked to have been notified before the meeting to have been given the opportunity to view the information. He reminded members what the review was not about and concluded that Mr Patel had undertaken checks on the employees to ascertain that they were who they said they were and allowed to work in the UK. He did not knowingly employ illegal immigrants and he asked the Committee to dismiss the application to revoke the licence.

(12.15pm the Licensing Officers, applicants and respondents all left the meeting)

Members discussed in depth the information contained within the report and the representations made by all parties. They considered all guidance from the Home Office and what was written within the Immigration, Nationality, and Asylum Act 2006. They noted that to date no criminal charges had been brought against Mr Patel. Mr Patel had carried out checks on his employees to check their eligibility to work in the UK as he saw fit. Although a lot was made by the Police about the conditions that the employees lived in Members were aware that this did not undermine any of the Licensing Objectives but felt that Mr Patel should have had a greater awareness of his duty of care to his employees and his business practices. Having taken account of all the information before them, Members felt satisfied that there was sufficient evidence that any of the Licensing Objectives were being undermined and therefore it was proposed, seconded and agreed that no further action was required.

(12.45pm all parties returned to the meeting).

The Solicitor to the Committee read out the Committee's decision. Having considered the submissions and evidence placed before the Committee they have decided that on balance the unanimous decision is to reject the application to revoke the licence and to take no further action. The Committee wish to impress upon the Respondent that in terms of his business practice there are a number of areas of concern that the Committee trust the Respondent will immediately address. A full decision of the Committee and the reasoning behind the decision is reproduced below.

The Committee closed at 12.50pm.

Decision of the Committee Friday 18th July 2014

The Committee Members have been asked to consider an application brought by the Chief Constable of Lincolnshire Police ("The Applicant") to review the premise licence relating to the premise known as the Bombay Brasserie ("The Respondent") on the basis of alleged breaches of the following licensing objectives following a visit by Home Office and Police Officers to the Respondent's premise on 1st May 2014:

- 1) The prevention of crime and disorder
- 2) Public safety
- 3) The protection of children from harm.

Ground 1 – The prevention of crime and disorder

The Committee considered both written and oral evidence and gave particular consideration to paragraph 11.27 of the Home Office Guidance that states:

11.27 there is certain criminal activity that may arise in connection with the licensed premises which should be treated particularly seriously. These are the use of licensed premises:

- For **knowingly** employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter. (emphasis added)

The Committee note that this mirrors section 21 of the Immigration, Nationality, and Asylum Act 2006 (“The Act”) that states:

21 A person commits an offence if he employs another (“the employee”) **knowing** (emphasis added) that the employee is an adult subject to immigration control and that –

(a) he has not been granted leave to enter or remain in the UK, or

(b) his leave to enter or remain in the UK –

i) is invalid,

ii) has ceased to have effect, or

iii) is subject to a condition preventing him from accepting the employment.

Consequently, the Committee, to establish that the crime and disorder licensing objective is engaged must be satisfied that the Respondent ‘knowingly’ employed a person not entitled to work in the UK.

The Committee note that at the date of the hearing no criminal charges have been brought against the Respondent and neither party could provide an indication as to whether criminal proceedings were likely. The only real indication of any potential sanction being pursued against the Respondent is a letter from the Home Office dated 6th June 2014 that suggests a civil penalty under section 15 of the Act may be sought. The Committee note that to bring a successful challenge under section 15 does not require proof that the Respondent ‘knowingly’ employed a person not entitled to work in the UK, the mere fact of employing someone is sufficient.

The Applicant’s submissions in relation to this ground centred on a number of points and included:

1. Evidence that a worker who did not have a right to work in the UK made

a statement to an Immigration Officer on the day of the visit from Home office and Police Officers on 1st May 2014 that the Respondent knew he did not have a right to work;

2. The Respondent's failure to make adequate checks to satisfy himself that his employees had a right to work in the UK because:
 - i) He used QED Screening Ltd who are not recognised as a Home Office approved screener;
 - ii) He did not obtain all relevant documents in relation to the immigration status of all employees;
 - iii) He gave one of the workers a trial without first obtaining documents relevant to his status in the UK (i.e. passport etc)
3. The fact the employees were paid in cash and they were only given a statement related to tax and national insurance on a monthly basis.

Conversely, in relation to point 1 the Respondent questioned the quality of the evidence of the employee, and therefore, the weight that should be given to it. The Respondent's concern was around the level of understanding and interpretation and the possibility that the employee may have given a response that he believed may assist him. In addition, the Respondent during questioning denied that he knew that any of the employees were not entitled to work in the UK.

In relation to the list at point 2 the Respondent submitted that he did carry out stringent checks by going through QED, obtaining passports, visas and National Insurance numbers.

In terms of point 3 the Respondent gave evidence that cash wage payment were not uncommon in the restaurant business and pointed out that in over 34 years of business he has never had concerns raised by HMRC into his business activities or on how he deals with tax and national insurance matters.

Committees Findings on Ground 1:

In terms of point 1 the Committee determined that they would give greater weight to the first hand evidence of the Respondent rather than rely on hearsay evidence of a person they did not have the opportunity to question to ascertain the quality or any ulterior motive behind his evidence. Furthermore, the Committee were satisfied as to the Respondent's apparent honest response to questions as at no time did he seek to avoid difficult questions and gave unhesitating candid replies that on occasion were to his detriment.

In addition the Committee gave consideration to the approach taken by the Home Office who in their letter to the Respondent of 6th June 2014 indicate they are considering whether he is liable for a penalty (a civil and not a criminal

penalty) under section 15 of the Immigration, Nationality, and Asylum Act 2006 (“The Act”). This part of the Act, as noted above, makes no reference to an employer ‘knowingly’ employing someone who does not have a right to work, but just the fact that he may have employed someone who did not have a right to work.

Consequently, the Committee note that the Home Office who were present at the date of the visit and actually took the statements from the employees have not to date chosen to rely on that statement to take criminal action under the alternative remedy under Section 21 of the Act.

The Committee are mindful of the different burdens of proof that the Immigration Authority would have to overcome in terms of civil action (on the balance of probabilities) and the criminal action (beyond all reasonable doubt). However, taking this in to account along with the first hand candid evidence of the Respondent the Committee have determined that the statement alone is not sufficient to establish the Respondent knowingly employed someone not entitled to work in the UK.

In terms of point 2 the Committee would accept that the Respondent could do more in terms of checking and would expect him to adopt a more stringent approach to the relevant Home Office Guidance in the future. However, the submissions made by the Applicant do not of themselves establish that the Respondent ‘knowingly’ employed people not entitled to work in the UK. Clearly what this evidence does indicate is that the lesser civil wrong (where ‘knowingly’ does not have to be proven) under section 15 of the Act may be established, and this appears to be the avenue taken by the Home Office.

In terms of point 3 the Committee are mindful that it is usual practice in the restaurant trade to pay members of staff in cash. They were also mindful that the HMRC have not raised any concerns in relation to the Respondent’s methods of dealing with tax and national insurance matters with his staff. Consequently, the Committee do not believe this advances the Applicant’s claim that he knowingly employed people not entitled to work in the UK.

Consequently, in terms of Ground 1 the Committee are not satisfied that the Respondent ‘knowingly’ employed people not entitled to work in the UK and therefore do not believe the licensing objective relating to crime and disorder is engaged.

Ground 2 – Public safety

The Committee considered both written and oral evidence in relation to this part of the application. The Applicant’s submissions centred on the conditions of the living accommodation provided for employees that are situated above the Respondent’s restaurant area. It was submitted that the living conditions were of such poor standard, described as ‘basic minimalist squalid conditions’ and

basic provisions were available in terms of shelter, heat, toilet facilities and running water...'. It was asserted that these conditions raised concerns in relation to public safety as the living conditions of the employees then resulted in a lack of competency and training of the employees in relation to food preparation and levels of personal hygiene.

On considering this evidence the Committee have determined that the Applicant has made an assumption, not backed by evidence, that those who live in alleged poor accommodation subsequently lack competencies in terms of food preparation and develop a lack of personal hygiene. This assumption is not supported by any evidence and the Committee note that the Council's Environmental Health team have not submitted any evidence to suggest there is a link between the living conditions of some employees having an adverse affect on hygiene that could result in public safety being compromised, or any other concerns relating to public safety at the Respondent's premise.

Evidence was submitted by the Applicant that demonstrates Lincolnshire Fire & Rescue have served a Prohibition Notice on the premises that relates to the condition the first floor upwards. Members of the Committee were concerned that the Respondent allowed his employees to live in accommodation that was unsafe and were disappointed at the Respondent's apparent lack of engagement in terms of the employees living conditions as he accepted he had not visited the living area for a number of years. However, from a licensing perspective the question for the Committee is, do these failures result in an issue related to public safety? As the Applicant rightly accepted employees are not members of the public when referring to public safety in the context of applying the licensing objectives. There were no submissions or any suggestion that the concerns of Lincolnshire Fire and Rescue raise concerns for the members of the public frequenting the restaurant, in fact as noted above, the Prohibition Notice only prohibited the use of the 1st floor and above and not the ground floor where the restaurant is situated. Members of the Committee therefore concluded that on the evidence before them, whilst there were clear concerns about the wellbeing of the Respondent's employees who lived in accommodation above the restaurant, there was no evidence to support the contention that public safety was being compromised.

Ground 3 – The protection of children from harm

The Committee found the Applicants application bereft of any evidence in support of their assertion that the matters complained of required the revocation of the premise licence to protect children from harm. As a consequence the Committee determine that in the absence of any evidence the only reasonable conclusion open to them in relation to this part of the application is not to revoke the license or take any other action.

Conclusion

The Committee concludes that whilst they have concerns about some of the Respondent's practices and in particular the conditions in which his employees were housed they do not believe there is sufficient evidence to conclude that

any of the licensing objectives have been compromised as a result of any act by the Respondent and therefore, the Committee refuse the request to revoke the premise license and believe it is unnecessary to take any action at this time.