

## **LICENSING PANEL**

**TUESDAY, 29 AUGUST 2017**

PRESENT:- Councillors Colin Lovell, Vera Tomlinson and Nick Martin.

### **61. Appointment of Chair**

Resolved – That Councillor Colin Lovell chair this meeting of the Panel.  
(Councillor Lovell took the Chair.)

### **62. Declarations of Interest**

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

### **63. Application to Review the Premises Licence, Jack Spice, 61 Fleet Street, Swindon, SN1 3AL**

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application for a Review of the Premises Licence for Jack Spice, 61 Fleet Street, Swindon, (b) written representations from Wiltshire Police in support of the review, (c) written representations from Immigration Enforcement in support of the review, (d) oral submissions in support of the application for a review received from PC Michael Diffin, M.B.E., (Police Licensing Officer), (e) oral submissions opposing the review by the Premises Licence Holder (Mohammed Jakariya) and his son (Mohammed Hanifi), (f) questions from Members to the applicants and officers and answers received, and (g) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy.

The Council's Licensing Manager introduce the report noting that:

- The application for review was called by Wiltshire Police under the Prevention of Crime and Disorder Licensing Objective.
- The Premises Licence was originally issued in 2005. The business had changed its name after the date of issue but there was no requirement to update the Premises Licence with changes of operating name.
- On 17<sup>th</sup> June 2017 Wiltshire Police visited the property and found 4 people working at the premises that were illegally present in the United Kingdom and one person working at the premises that was an asylum seeker with no right to work in the United Kingdom.

Wiltshire Police requested that additional information involving links involving other properties to Jack Spice be considered. Following advice from the Solicitor to the Board and the Council's Licensing Manager and given Mr Jakariya's objection to its submission the Panel determined that this additional information would not be tabled or considered as part of the review before it.

The Police case for a review and a summary of points raised can be broadly summarised as follows:

- The Police case is as tabled in the review application, police statement and submission from the Immigration Service appended to the agenda papers.
- On 17<sup>th</sup> June 2017 at 21:00 hours PC Diffin and two Police Community Support Officers (PCSOs) entered Jack Spice on a Licensing check.
- The Premises Licence was not on display at the premises and the manager was unable to produce a copy of the licence.
- On securing the premises four Bangladeshi males who were in the United Kingdom illegally were found working as chefs in the kitchen.
- In addition a further male who was an asylum seeker with no right to work in the United Kingdom was found working as a waiter at the premises.
- The use of illegal workers often meant them being paid less than the minimum wage and the employer having control over them.

Responses to questions to Wiltshire Police from Panel Members and the Premises Licence Holder and his representative can be broadly summarised as:

- The Police had not taken action against the premises earlier as Immigration had only become a contributing partner in April this year and could therefore trigger a review.
- That regardless of people being referred from an employment agency it was the responsibility of the employer to carry out the required legal checks and to have appropriate documentation available for inspection.
- That when the Police inspection of the premises was undertaken two officers were in uniforms and he had his warrant card visible although he was in plain clothes.
- It was normal procedure to secure the premises prior to talking to management.

The case by the Premises Licence Holder and his representative against the review and a summary of points raised can be broadly summarised as follows:

- He had started his business in 2008 and since then with the help of his family had endured through hard times and recession often struggling to pay his bills.
- He had worked hard seven days a week despite having type 1 diabetes and have to take medication to control high blood pressure.
- He needed his business to support his family as he did not have a strong background in education and it was his experience in the working environment.
- Losing his licence would mean he would be unable to continue supporting local charities.
- The workers in question had been referred to him from an employment agency called Bricklane Travel and Job Centre in London whom they thought had undertaken the appropriate employment checks.
- That the Premises Licence was at home following a refurbishment of the premises. Mr Jakariya wasn't aware that his failure to display the licence was an offence.
- The Police had never been called to the premises to deal with any trouble.
- He apologised for his mistake which he had learnt from.

- That the Police did not interact with them prior to going to the kitchen area.
- That the kitchen had a door in it.
- That consideration was being given to making Mohammed Hanifi the Designated Premises Supervisor.
- Mr Hanifi explained that he was 23 years old and was still learning his role and gaining experience.
- Right to work in the United Kingdom checks had been undertaken as it was believed the Employment Agency had these.
- Employees were often given trial periods of employment.
- The restaurant staff were strict in meeting the premises licence conditions and wouldn't serve alcohol without food or allow alcohol to be taken off the premises.

Responses to questions to Premises Licence Holder and his representative from Panel Members and Police can be broadly summarised as:

- That allowing people to work in the restaurant that had no right to work in the United Kingdom was not intentional as these had been referred to them from an employment agency.
- The illegal works were employed because they didn't have a job and management felt sorry for them.
- Whilst not deliberately employing illegal workers Mr Jakariya noted that this was not uncommon in Swindon or nationally.

Resolved - After considering: -

1. The application to review the premises licence made by Wiltshire Police, together with additional evidence from Wiltshire Police; and
2. Representations and material put forward on behalf of the Premises Licence Holder;

And taking into account: -

1. The Secretary of State's Guidance; and
2. The Licensing Authority Licensing Statement:

And having in mind the promotion of the Licensing Objectives in particular the prevention of crime and disorder;

The Panel determined that the Premises Licence for Jack Spice, 61 Fleet Street, Swindon be revoked.

Reasons

1. The Panel heard evidence that four male persons who were illegally residing in the United Kingdom with no right to work were being employed as chefs in the kitchen of Jack Spice.
2. The Panel heard evidence that a male asylum seeker who had no right to work in the United Kingdom was being employed as a waiter at Jack Spice.
3. The Panel heard evidence from the Premises Licence Holder that he admitted that illegal workers were working at the premises but that they had been referred through an employment agency who he believed had carried out check that they had the right to work in the United Kingdom. The Panel determined that should this have been the case it did not lessen the employer's legal obligation to check that the person in question had the right to work in the United Kingdom.
4. The Panel heard evidence from Mohammed Hanifitha that he was taking on responsibilities at Jack Spice and that it had been his oversight that appropriate legal checks had not been undertaken. The Panel determined that this did not absolve the management of its legal responsibilities in ensuring appropriate legal checks had been undertaken. It also noted comments during the hearing relating to management feeling sorry for the workers and that it was not uncommon for restaurants to employ illegal workers and the fact that five illegal workers were found working on the premises undermined the creditability of the position put forward by the Premises Licence Holder that failure to complete right to work in the United Kingdom checks was an oversight.
5. The Panel was mindful of its obligations under paragraphs 11.27 and 11.28 of the Licensing Act Guidance in respect of the employment of persons unlawfully in the United Kingdom.
6. The Panel determined that given the evidence presented to it that the premises were poorly managed and given the seriousness of the offences saw no alternative to the revocation of the licence.

The Chair reminded both parties that they had the right of appeal against the determination of the Panel and that any such appeal should be made within 21 days of the receipt of the written decision.