

LICENSING PANEL

TUESDAY, 16 OCTOBER 2018

PRESENT:- Councillors Vera Tomlinson, John Ballman and Caryl Sydney-Smith

9. Appointment of Chair

Resolved – That Councillor Vera Tomlinson be Chair of this meeting of the Panel.

(Councillor Tomlinson took the Chair.)

10. Minutes

Resolved – That the minutes of the meeting held on 2nd August 2018, be confirmed and signed as a correct record.

11. 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.

12. Application to review the Premises Licences Licence, Taj Mahal, Shaw Ridge Leisure Park, Swindon

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application to review the Premises Licence for Taj Mahal, Shaw Ridge, Swindon, (b) written representations from Wiltshire Police in support of the review, (c) additional papers submitted by the Police in support of their application for a review tabled at the meeting, (d) oral submissions in support of the application by Wiltshire Police, (e) written submissions in support of the case opposing the review tabled at the hearing, (f) oral submissions opposing the review by Mr Sabbir Ahmed (Solicitor to the Designated Premises Supervisor) and Mr Mahar (Designated Premises Supervisor), (g) questions from Members to representatives of Wiltshire Police and the Solicitor to the Premises Supervisor, and (h) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy.

Prior to the hearing commencing the Panel sought guidance from the Panel's Legal Advisor to confirm that the hearing could proceed following the receipt of submissions from the Solicitor to the Designated Premises Supervisor, that the consideration of the application for review was premature as the Home Office still hadn't completed its investigation. Having considered advice from its legal advisor the Panel determined that it would proceed with the hearing.

The Council's Licensing Manager introduced the report noting:

- That the options available to Members in considering the review application in respect of Taj Mahal, Shaw Ridge, Swindon.
- The application for the review submitted on 1st August 2018 was set out on page 19 of the agenda papers.
- That Mr Mahar Ullah was the Designated Premises Supervisor for the Taj

Mahal.

- The scope of activities permitted under the current Premises Licence.
- The current ownership and management structure of Taj Mahal.
- The history of changes to the holder of the Designated Premises Supervisor.
- A summary of the relevant paragraphs (11.23 to 11.28) of Section 182 of the Secretary of State's Guidance.
- The grounds for the application for a review of the Premises Licence, namely, that four persons who were allegedly working at the premises did not have the right to work in the United Kingdom.
- A warning letter, prepared by the Licensing Authority and Wiltshire Police, regarding the employment of illegal workers was sent to all licensed premises by the Licensing Authority in May 2018. A copy of the letter was included in the Agenda papers.
- Documentation from the Home Office and Immigration Service were included in the Agenda Papers on pages 35-42 regarding the four persons apprehended at the premises.

The case for the review by Wiltshire Police can be broadly summarised as:

- A summary of the Section 182 Guidance which was tabled for the Panel's information.
- In response to a number of cases brought to review in respect of the employment of illegal workers the Licensing Authority and Wiltshire Police produced a letter reminding the management of licensed premises and food outlets of their responsibilities as employers and of the potential consequences of employing illegal workers and therefore breaching the Prevention of Crime and Disorder Licensing Objective. This letter also set of the processes to follow in employing new workers.
- On 22nd June Immigration Officers from the Cardiff Office and Wiltshire Police attended the premises and found four persons in various parts of the premises that did not have the right to either stay or work in the United Kingdom.
- The individuals were interviewed under caution admitted to working in some capacity at the premises for varying periods of time either voluntary or in a paid capacity.
- That the initial response to questioning was usually that they were either just helping out or were only visiting the premises.
- A civil penalty notice has been issued by the Home Office but this process does not need to be completed prior to a review, nor does a crime need to have been directly committed.
- The people found at the premises have been arrested by Immigration Officers and have been detained and the Home Office has confirmed that they had no right to work in the United Kingdom.
- The responses of the people interviewed were included within the paperwork submitted in support of the review application.
- The statements included admissions that all four individuals worked at the premises and lived there, some for a considerable time.
- This case was not about mistakenly employing one person but involved four different individuals.
- Immigration Officers visited properties following the receipt of credible intelligence; they did not make random visits.

- Right to Work checks were easy to complete and could be undertaken on-line and took approximately five minutes.
- Following the receipt of the warning letters in May the expectation was that responsible businesses would either hold relevant information regarding the legal status of their employees on the premises or have it readily available if required to produce it.
- The management of the premises had not contacted the Police to contradict the allegation of employing illegal workers until the papers produced by their solicitor for the hearing.

Responses to questions to the Police can be broadly summarised as:

- That the interviews of the persons detained was conducted under caution with interpreters present.
- That the perimeter of the premises had been secured prior to entry and two individuals had been apprehended trying to leave the premises.
- That the joint letter of the Licensing Authority and Police referred to by the Police in their submission was the letter dated 8th May 2018 on page 33 of the agenda papers.
- That no CCTV footage had been produced by the management of Taj Mahal to support their contention that the individuals did not work at the premises.
- The Police had not visited the premises to ascertain whether CCTV footage of the period in question was available. The investigation of the matter rested with the Immigration Service.
- The Home Office had confirmed that none of the four individuals detained at the premises had the right to live or work in the United Kingdom.
- The Home Office notification did not relate to the civil penalty notice which was not a matter for the Panel to consider.
- After discussions between Wiltshire Police and the Home Office it was determined the Home Office would deal with the Civil Penalty Notice which they were pursuing and Wiltshire Police with the Premises Review Application.

The case against the review can be broadly summarised as:

- The appellant's case was summarised in the letter dated 12th October 2018 from their solicitor and which was before Members.
- The review before members was not in question but the issue was the decision arising from it, how the decision was reached and how Mr Ullah was held to account.
- There was a set procedure to be followed prior to finding someone guilty, evidence needs to be put forward and that evidence needs to be considered, the Panel cannot go on the balance of probability.
- There cannot just be an assumption Mr Ullah employed illegal workers.
- The Home Officer verification and status checks in respect of the workers were accepted.
- The second point as to whether they were working at the premises was disputed and management of the Taj Mahal were adamant that they were not working at the premises.
- It was not enough to find people with no legal status at the premises.

- The Bengali community accepted and accommodated visitors and this arose from their culture.
- The persons in question were not in uniform and this would be required if working at the premises and dealing with food.
- There was a process following the issue of a Civil Penalty Notice and this hadn't been completed. The Immigration Team took this decision and if it were negative you had twenty eight days to raise an objection given the potential penalties which were outlined.
- That in the experience of the appellant's lawyer suspected illegal migrants making statements to Immigration Officers would seek sympathy and show their vulnerability or would feel pressure to say what they believed the immigration officers wanted.
- Mr Ullah had not been able to contact the persons detained at the premises in order to seek a retraction statement.
- The review should not progress until the Civil Penalty Notice procedures had been completed and to date Mr Ullah had not received any information from the Home Office.
- If a Panel reached a decision adversely affecting Mr Ullah or the business and the Home Office did not find against him what would then happen?
- Two of the persons in question were found upstairs nowhere near the restaurant and the reason for them being there was conjecture and it was possible they were hiding not because they were working at the premises but because they were in the country illegally and feared detainment.
- There is no evidence Mr Ullah hired illegal workers and his employment records were not checked and he had not had the opportunity as yet to contest the Civil Penalty Notice.
- Why customers present at the premises were not questioned immediately the Police and Immigration Officer entered the premises?

Responses to questions to Mr Ullah and his Solicitor be broadly summarised as:

- That the probable reason for either hiding or attempting to flee the premises was the fear of being detained for being in the country illegally.
- A lot of illegal migrants didn't understand the legal process or how it operated and feared people in uniforms such as the police.
- That many illegal migrants obtained illegal documentation in order to seek work.
- That the four persons in question could not be considered anything more than suspected workers at this time.
- That all four individuals detained at the premises were only visitors.
- That helping out at the premises was the same as working and the four individuals made up a story claiming to be either helping or working because they believed this would benefit them by making them look vulnerable and also to show they were not reliant on public funds.
- That the suspected workers were interviewed together in the same room.
- That the suspected illegal workers were found in casual clothes.
- That the restaurant employed six or seven employees on the day in question and that there were no other employees on the premises that day.
- The illegal migrants found at the premises were guests visiting family within the Bengali community but were staying at the restaurant.
- Mr Ullah had run a business for many years and would ensure measures

were in place to ensure there was not a reoccurrence of having guests at the premises unless he knew them personally. He would accept a condition to ensure this happened.

- That they did not accept that the suspected workers claiming that they were trafficked into the country was a more obvious claim to make if they were scared.
- That Mr Ullah was not on the premises during the visit by Immigration Officers although the premises were open for business.
- The premises did not have operational CCTV.

Resolved - That 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: -

- i. The Prevention of Crime and Disorder

And having listened to and carefully considered all of the evidence and submissions put forward by the police, the Solicitor to the Premises Licence Holder and the Designated Premises Supervisor the Panel reached the following conclusions:

The Police have provided evidence of breaches of the Prevention of Crime and Disorder Licensing Objective. There was evidence of persons working at the premises who had no right to stay or work in the United Kingdom.

The Panel conscious of its duty to ensure that the licensing objectives are met determined that the appropriate decision was to revoke the premises licence.

Reasons

1. The Panel was provided confirmation from the Home Office that four persons found on the premises had neither the right to stay nor work in the United Kingdom.

2. The Panel considered evidence from the Solicitor to the Premises Licence Holder who attended with the Designated Premises Supervisor, together with supporting statements, that the four individuals found at the premises were visitors and were not working either in a paid or voluntary capacity. It also considered the Solicitor's submission that the statements of the individuals to the Immigration Service were motivated to benefit any appeal for asylum. However the Panel was satisfied that the written statements from the four individuals were provided under the provisions of PACE (Police and Criminal Evidence Act) in which they voluntarily admitted that they had been employed at the premises. The Panel determined that it found the PACE statements to be credible and that there was no reason to depart from the plain language of those statements.

3. The Panel considered a submission from the Solicitor to the Premises Licence Holder that the hearing was premature because the Home Office had yet to determine whether the individuals were actually working. However the Panel taking into account the Secretary of State's Guidance did not consider it had to wait for the outcome of this determination, to establish whether the Crime Prevention Objective was in all of the circumstances being undermined.

4. The Panel was mindful of the Secretary of State's Guidance under paragraph 11.28 when considering the action it deemed necessary to ensure the promotion of the Licensing Objectives.

5. The Panel was mindful that all licensed premises in the town were sent a joint letter from the Council's Licensing Manager and Wiltshire Police's Crime Prevention Manager dated 8th May 2018 setting out the seriousness of employing illegal workers and the potential consequences should illegal workers be found at a premises.

6. The Panel noted that there was no CCTV in operation at the premises but determined that this breach of the Premises Licensing Conditions would not be considered as it did not form part of the review before it.

The Chair reminded both parties that they had the right of appeal to the Magistrates Court and that an application for any such appeal should be made within 21 days.