

LICENSING PANEL

TUESDAY, 19 DECEMBER 2017

PRESENT:- Councillors Vera Tomlinson (Chair), Steph Exell and Emma Faramarzi.

88. Appointment of Chair

Resolved – That Councillor Vera Tomlinson Chair this meeting of the Panel.
(Councillor Tomlinson took the Chair.)

89. 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.

90. Application to Review Premises Licence in respect of Spice Kitchen, 10 Swindon Street, Highworth, Swindon

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 Spice Kitchen, 10 Swindon Street, Highworth, Swindon, (b) written representations from Wiltshire Police in support of the review, (c) a set of conditions tabled at the meeting on behalf of Wiltshire Police and the Premises Licence Holder, (d) oral submissions in support of the jointly agreed additional conditions by Mr Frank Fender (Licensing Consultant), (e) questions from Members to the Police, Premises Licence Holder and officers and answers received and (f) 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 introduced the report noting that:

- The application for the review of the Premises Licence had been brought by the Police under the Crime and Disorder Licensing Objective.
- That additional conditions jointly agreed by Wiltshire Police and the Premises Licence Holder had been tabled for members' consideration.
- The options available to the Panel in determining the review and the tabled additional conditions were set out in paragraph 2.1 of the report.
- That the current licensable activities permitted were the sale of alcohol and the provision of Late Night Refreshments.

The Police case in support of the application for review can be broadly summarised as:

- The employment of illegal workers at the premises was discovered as part of the inspection of a number of premises within the Borough.
- The Immigration Service were still investigating this case.
- In discussions with the consultant acting on behalf of the Premises Licence Holder two conditions had been jointly agreed which the Police felt would uphold the Crime and Disorder Licensing Objective.
- If the Panel were minded to consider the conditions tabled the Police would

- not seek revocation of the Premises Licence.
- The Current Designated Premises Supervisor was also the Designated Premises Supervisor for the Purple Mango and held a job as an electrician during the day.
- The Premises Licence Holder had agreed to undertake the role of Designated Premises Supervisor.
- The Chef at the premises, who did not have a grasp of employment regulations, had employed the persons in question.

Responses to questions to Wiltshire Police from Panel Members and the Premises Licence Holder's consultant can be broadly summarised as:

- That the conditions proposed would normally be part of management procedures.
- That the Police were no longer seeking revocation as they believed that the Licensing Objectives would be upheld with the agreed licence conditions.
- That the Police had not discussed possible remedies with the Premises Licence Holder prior to calling the review.
- The Police believed that the current Designated Premises Supervisor needed to be replaced as he was currently overstretched with other work.

The case opposing the review by the Mr Fender can be broadly summarised as:

- The Premises Licence Holder accepted the need for a review.
- The Police visit on 28th September 2017 found two persons on the premises who did not have the right to reside or legally work in the United Kingdom.
- He was surprised that the application for review of the Premises Licence had been made only five days after the Police visit.
- Some issues relating to the case were still under investigation.
- This was the first premises operated by the Premises Licence Holder although he had previously managed an establishment, without incident, in Northampton.
- Mr Abedyn Zainal (Premises Licence Holder) had been a personal licence holder since 2015.
- Mr Anwar Pareez Aftab (current Designated Premises Supervisor) had been involved in the Purple Mango which had closed in 2012.
- The history of the premises prior to it gaining its current Premises Licence.
- The restaurant employed three people in the kitchen and two people in the main seating area.
- All current staff had the right to work in the United Kingdom.
- Some details in the Police statements attached to the agenda papers were being disputed by Mr Zainal.
- The person in question had been employed in a temporary capacity for a period of approximately two weeks and the appropriate checks would have been undertaken if they had been permanently employed.
- The legality of the checks carried out by the Police on 28th September were being questioned.
- The Premises Licence Holder was co-operating fully with on-going investigations.
- The issue of civil penalties issued were being contested.
- The conditions would impose stricter control of paperwork which would be

- kept on the premises for inspection.
- There was an apparent lack of oversight by the current Designated Premises Supervisor which was why Mr Zainal was proposing to undertake this role.
- The Premises Licence Holder apologised unreservedly for what had happened which was the result of misunderstandings and wouldn't occur again.
- With the exception of this incident Mr Zainal had an excellent record in operating premises.
- That revocation, given the explanations to the Panel and agreed conditions might not be appropriate or proportionate.

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

- That 10 Swindon Street was the business address and not Mr Zainal's personal residence.
- That new management procedures and record keeping would be robust and supported by visits by experienced staff.
- Mr Zainal understood that any breaches of the proposed conditions could lead to a further review of the Premises Licence.
- Mr Zainal understood his legal obligations in respect of checking potential employee's right to work in the United Kingdom and in maintaining the records of such checks.
- Whether the proposed condition two relating to checks by an independent person was sustainable in its current form.
- That the two persons caught working at the premises had not been registered to National Insurance or taxation purposes.

Resolved – The Panel considered the representations made by the Police and the Premises Licence Holder's representative and the jointly submitted conditions.

And taking into account: -

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

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

Having carefully considered either revoking or suspending the premises licence due to the employment of illegal workers the Panel, having regard to the submissions of both parties and the jointly submitted conditions, decided not to undertake such sanctions on this occasion. However the Panel did wish the Licence holder to understand the severity of the employment of an illegal worker, even unintentionally, and the possible sanctions available in accordance with paragraph 11.28 of the Section 182 guidance.

Notwithstanding the applicant's acceptance of the conditions jointly submitted by both parties, their co-operation in agreeing conditions and the fact that the conditions being imposed have addressed the concerns of the applicant for the review, the Panel decided to attach the following conditions on the Premises

Licence and to remove the Designated Premises Supervisor.

Conditions

1. No person shall be employed at the premises in any capacity, whether temporary or permanently, unless they have presented documents proving they have a right to reside and work in the United Kingdom. Copies shall be taken and a proper record maintained of all documents provided. The record shall be maintained at the premises for the immediate inspection of authorised officers at all times the premises are open.
2. The premises shall be subject to an unannounced compliance audit by a suitably qualified consultant. The first audit must be undertaken by 31st January 2018 to review compliance with all legal employment requirements in respect of all current employees. A minimum of a further two unannounced compliance audits shall be held before 31st January 2019 to ensure continued compliance for all current staff or those employed as at 19th December 2017.

Reasons

1. The Applicant for review and the Premises Licence Holder were satisfied that the proposed conditions would uphold the licensing objectives, and in particular the prevention of crime and disorder.
2. Given that the Licensee including the appointment of a Consultant and their cooperation in agreeing conditions for the premises licence, the Panel, taking into account paragraph 10.10 of the Secretary of State's Guidance considered that in this instance a revocation or suspension of the licence would not be proportionate.
3. The Panel determined that the Designated Premises Supervisor should be removed having considered evidence from both the Police and the Consultant to the Premise Licence Holder that his other employment made his management of the premises too onerous leading to poor management of the premises as evidenced by misunderstandings in respect of the employment of workers which had led to a breach of the licensing objectives.
4. That the proposed condition 2 submitted to the Panel had been amended to ensure the licensing objectives were upheld through the auditing of the employment of staff.
5. The Panel considered the proposed 2 monthly audits in the jointly agreed condition tabled at the meeting was disproportionate given the size of the venue and given that the initial audit, as amended, would put in place robust practices.

The Chair reminded both parties that you had the right of appeal against the decision to the Magistrates Court and that any such appeal should be made within 21 days.