

# Minutes

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## Licensing Sub-Committee Friday, 22nd March, 2019

### Attendance

Cllr Morrissey  
Cllr McCheyne

Cllr Trump

### Officers Present

Paul Adams	-	Principal Licensing Officer
Surinder Atkar	-	Planning Solicitor
Dave Leonard	-	Licensing Officer
Jean Sharp	-	Governance and Member Support Officer

### 398. Appointment of Chair

Members **RESOLVED** that Cllr McCheyne should chair the meeting.

### 399. Administrative Function

Members were respectfully reminded that, in determining the matters listed below; they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

### 400. Application to Transfer a Premises Licence - The Raj, 21 Kings Road, Brentwood. CM14 4DJ

An application had been made to Brentwood Borough Council for the transfer of premises licence for The Raj, 21 Kings Road, Brentwood CM14 4DJ.

This premise was currently a restaurant specialising in Indian cuisine situated in Kings Road, Brentwood and it was currently licensed for the Sale by Retail of Alcohol & Late Night Refreshment.

On 12<sup>th</sup> February 2019 the Applicant Kalam Ullah submitted an online application with the intention to transfer the existing premises license to Kalam Ullah from Badsha Miah. On 13<sup>th</sup> February 2019 there was an application to vary the existing Designated Premises Supervisor, Badsha Miah, to Jetu Miah.

The Committee heard from Mr. Leonard of the Council's Licensing Department who explained the background to the application and stated to the Committee that the application was under the provisions of Section 42, Licensing Act 2003.

The Committee then heard from the Police representative, Mr. Jones, who stated that the relevant premises had been raided by the Immigration Services in November 2018 and 5 illegal workers were found to be working at the Restaurant. Serious immigration offences relating to unauthorised employment of illegal immigrants had been committed by the Restaurant owner. It was shortly after this that the transfer procedure had been commenced. It was the view of the Police that this was a cynical attempt to give the impression that because there had been a transfer that the new regime would be less likely to commit further offences.

Mr. Jones explained that Kalam Ullah was Badsha Miah's brother and that he believed the transfer was an attempt to avoid the consequences of the Immigration offences since Badsha Miah and Kalam Ullah were joint leaseholders of the premises and therefore had effective control of the business. In answer to questions from the Committee the Police confirmed that the Applicant had a clean record and did not have previous convictions.

The Committee then heard from Mr Dadds representing the Applicant who stated that despite the revocation of the premises license, the Committee should keep an open mind on the transfer application. He further stated that it was for the objecting authority to show that the licensing objectives might have been undermined and that an objection should only be raised in exceptional circumstances. The Applicant was innocent until proven guilty. The immigration offences were not to be attributed to him and the Applicant was of good character and had no licensing convictions - it was a slur on his character to suggest otherwise. All that had been adduced to link him with any wrong-doing was that he was joint leaseholder and that he worked as a chef on the premises. Effectively the Police were saying that a family member could never succeed on a transfer application. It was tantamount to suggesting that if a family member lost his/her driving license that no other member of the family could drive.

Mr. Dadds stated that the Applicant was employed on PAYE by his brother as a chef and had no control over the business. If the Applicant was implicated in any offence the Home Office would have lodged an objection and it had not. In addition the family owned a number of properties and the fact that the application to transfer came from an address that Badsha Miah lived at did not mean the Applicant too lived there as the Police seemed to be maintaining.

Mr. Dadds explained that the Applicant was on the lease only to reinforce the covenants on the lease. The business was run by Badsha Miah since 2004 and the Applicant had no involvement in it. The Police were making an assumption that the Applicant received profit from the business when there was no evidence to support this. The choice faced by the business in the light of revocation of the premises license was to transfer to his brother or to a stranger in the street. Obviously the brother was preferable. If the transfer application was successful the Applicant would offer a condition/undertaking on the premises license appeal that his brother would have no involvement in the business in the future.

The Committee then asked questions of Mr. Dadds. Cllr Trump questioned why the premises revocation was being appealed when it was accepted that illegal employment had taken place at the premises. Mr. Dadds responded that if the transfer application was granted Badsha Miah would drop off and the Applicant would take over strengthening any appeal. Cllr Morrissey questioned why a transfer to family and friends was necessitated at all. Mr. Dadds explained that when the premises license was revoked the goodwill value of a business declined so any third party purchasers would offer low purchase prices hence the need for family.

The parties then summarised their respective positions and the Committee retired to consider its decision.

The Committee considered carefully all the information that had been presented to it both in the report and verbally at this hearing

The Committee felt that there was a real nexus between the Applicant and his brother and that by allowing the transfer the licensing objectives would be engaged. There was reason to accept given the Police objections that the close association between both brothers was such that Badsha Miah would continue to run the business and that the transfer would not satisfy the Crime and disorder concerns. On a balance of probabilities it was felt that the Applicant would not have sufficient autonomy from his brother.

The Legal Adviser then announced the decision of the Committee that the application to transfer would be refused and that section 44 (5) (b) (i) Licensing Act 2003 applied.

The Applicant and his representative were reminded that they had a right to appeal against the decision to the Magistrates' Court.

**401. Application to Vary the Designated Premises Supervisor - The Raj, 21 Kings Road, Brentwood. CM14 4DJ.**

This application had been withdrawn.