

Minutes

Licensing Sub-Committee Wednesday, 1st May, 2019

Attendance

Cllr Morrissey
Cllr Mrs Slade

Cllr Trump

Officers Present

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

405. Appointment of Chair

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

406. 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.

407. Application for Transfer of 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 Rd., Brentwood CM14 4DJ.

This premise is currently a restaurant specialising in Indian cuisine situated in Kings Road, Brentwood and it had been licensed for the Sale by Retail of Alcohol & Late Night Refreshment. The premises license had been revoked by the Committee previously.

The application was brought before the Licensing Sub-Committee for determination on 1st May 2019 following representations from two Responsible Authorities, the Police and the Home Office (Immigration

Enforcement). The latter submitted a written representation and did not attend the hearing.

The Sub-Committee first heard from the licensing officer Dave Leonard who outlined his report.

On 22nd March 2019 the Applicant Kalam Ullah submitted an online application with the intention to transfer the existing premises license to Kalam Ullah from Badsha Miah. There was also an application to vary the existing Designated Premises Supervisor who is Badsha Miah to Kalam Ullah. On 1st April 2019 Essex Police submitted an objection to the application on the grounds of prevention of crime and disorder. On 28th March 2019 the Home Office (Immigration Enforcement) objected to the application on crime prevention grounds including the prevention of illegal working and immigration crime.

Mr. Dadds who represented the Applicant made an application to re-constitute the Committee on the grounds that 2 of its members had ruled in a decision for transfer in reference to the premises previously and therefore could not present an appearance of impartiality. The Legal Advisor Surinder Atkar advised the Committee that unless there was evidence of bias by the Committee given the numbers of Members qualified to sit on Licensing Committee that it was appropriate to continue with the presently constituted Committee. The Committee retired to consider the application and then returned to rule that the preliminary application was declined and that the matter would proceed.

The Committee then 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. Mr. Jones for the Police stated that the relevant premises had been raided by the Immigration Services in 2014 and November 2018 and on the latter occasion 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 first transfer application had been commenced and refused by the Committee on 22nd March 2019. The present application was identical to the one refused. 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 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. In answer to a specific question from Councillor Slade, Mr. Jones confirmed that the Applicant had been employed as a chef at the premises.

The Committee then heard from Mr Dadds representing the Applicant who stated that the Committee had to have an open mind to the application and exclude from its mind any the previous refused application. The previous refusal had been appealed. Also despite the revocation of the premises license that 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 may have been undermined. 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. 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 wrongdoing 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 should be remembered that active steps were being taken to remove Mr. Miah from the lease.

Mr. Dadds stated that 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 emphasised that the Applicant was on the lease only to reinforce the covenants on the lease. He had run the business for the past 3 months with no problems.

On the question of the Designated Premises Supervisor application the Police would have to show that the appointment would undermine the licensing objectives and they had not done so. The Applicant was of good character and should be treated on his merits.

The Committee then asked questions of Mr. Dadds. Mr Jones then summarised the Police case and Mr. Dadds followed with a summation of the Applicant's case.

The Committee then 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. Both applications would therefore be refused. It had not been established to the Committee's satisfaction that Mr. Miah would be excluded entirely from the premises operations and that the transfer would not satisfy the prevention of crime and disorder concerns. The immigration offences that had taken place at the premises were a real concern and looking to the future it was not established that further offences would not take place. 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.