

# Minutes

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## Licensing Sub-Committee Friday, 28th June, 2019

### Attendance

Cllr Jakobsson  
Cllr Keeble

Cllr McCheyne

### Officers Present

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

### 85. Appointment of Chair

Members resolved that Cllr McCheyne should chair the meeting.

### 86. 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.

### 87. Application to transfer premises licence, Licensing Act 2003 - 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

The application was brought before the Licensing Sub-Committee for determination on 28th June 2019 following representations from a Responsible Authority (the Police).

The Sub-Committee first heard from the licensing officer Dave Leonard who outlined his report. Mr. Leonard explained to the Committee that the application was under section 42 Licensing Act 2003. The Committee agreed to hear the application for transfer of premises license and change of designated premises supervisor together.

This premise was currently a restaurant specialising in Indian cuisine situated in Kings Street, Brentwood High Street, 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 The premises license had been revoked by the Committee previously.

On 2nd May 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.

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 followed by 2 subsequent applications had been commenced and refused by the Committee on 3 separate occasions. The present application was identical to the one refused apart from the new conditions which had been offered. 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. The brothers had been joint leaseholders of the premises since 2004. Mr. Jones explained even now the brothers were careless as a visit to the premises the previous Friday showed that the license was not posted up on the premises as required.

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 refusals had been appealed. Also despite the revocation of the premises license that the Committee should keep an open mind on the transfer application. Mr. Dadds then stated that Mr. Leonard should not have attended the premises on the previous Friday as stated, give evidence about that attendance and then present the report. This was a technical and fundamental breach for which the maximum fine was £500 and Mr. Dadds stated that he had never seen a prosecution for such a minor breach. 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 of good character and had no licensing convictions. 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. Mr. Dadds then referred to page 45 of the bundle of documents in reference to the Police letter. He stated that the question of the likelihood of further offences was prospective looking and there was no evidence that further offences would be committed. Secondly there was no association between the brothers and finally there was little to suggest that illegal employment would take place in the future.

Mr. Dadds stated that CCTV was now in place and that 5 months since the revocation of the license there was no evidence of wrong-doing at the premises. The exceptional circumstances required for the Police objection did not exist.

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 law and order 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.

**88. Application to vary a Designated Premises Supervisor - Licensing Act 2003 - The Raj, 21 Kings Road, Brentwood. CM14 4DJ**

The application to vary the Designated Premises Supervisor had been considered together with the application to transfer the premises licence which had been refused by the Licensing sub-committee.

**89. Determination of an application for Hackney Carriage & Private Hire Drivers Licence. (Exempt report)**

An application had been received by Brentwood Borough Council for the renewal of a combined Hackney Carriage and Private Hire Drivers Licence. The applicant had a recent relevant conviction which fell outside the Council's policy and therefore the matter needed to be considered by the Licensing Sub-committee.

The Sub-committee was addressed by the Licensing Officer and the applicant. Having considered the exempt report and oral submissions Members REFUSED the application.