

Minutes

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 12th 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 13th 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.

Minutes

Licensing Sub-Committee Friday, 5 April 2019

Attendance

Cllr Keeble
Cllr Reed

Cllr Trump

Officers Present

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

402. Appointment of Chair

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

403. 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.

404. Application to Transfer a Premises Licence – Jehan Curry Hut, 19 South Street, Brentwood. CM14 4BJ

An application had been made to Brentwood Borough Council for the transfer of the premises licence for **Jehan Curry Hut, 19 South Street, Brentwood CM144BJ** and was brought before the licensing sub-committee for determination following representations from a Responsible Authority (the Police) on the grounds of prevention of crime and disorder.

The sub-committee first heard from the licensing officer Dave Leonard who outlined his report.

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

The applicant Mr. Abdul Latif was seeking to have the premises license transferred to him from Mare Blu Restaurant. Under the Licensing Act 2003 the Police could object to a transfer if satisfied that in the exceptional circumstances of the case that the granting of the application would undermine the crime prevention objective. Essex Police had submitted such an objection on 6th March 2019.

The sub-committee then heard from Gordon Rashford, Essex Police, as a Responsible Authority. He referred to the written detailed submissions of the Police contained in the bundle of documents produced to the Sub-Committee. He referred to the Applicant being a director of Indian Dining Chutney House until his resignation in November 2018 following a raid by Immigration Compliance & Enforcement (ICE) on premises run by the Company called Chutney Joe's in High Street, Brentwood. The Applicant as sole director of the company was the directing mind and sole director. The raid disclosed an illegal worker employed at the premises. This person admitted he had no right to work in the UK. The Applicant was present and identified himself as director and Head Chef. Mr. Latif resigned from the company 4 weeks after the raid. One Rofik Khan took over as director of the company. Mr. Rashford explained that the prevention of crime objective in the 2003 Act included the prevention of immigration crime in licensed premises.

Mr. Rashford referred to the utility bills produced in the name of Khan and stated if the Applicant was only a chef at the establishment why did he have access to the bills It was then explained that Mr. Rashford attended the premises recently and found alcohol for sale at the Bar with drinks menus freely available without the relevant licensing authority.

Members of the Sub-Committee then put their questions to the Police.

The Committee then heard from the Applicant's legal representative Ms. Orfanidou who stated that the Police evidence was speculative whereas the Applicant was hard-working but unfortunate. The Applicant was a weekend chef when approached by the Khans to become company director. His English was poor so did not know the implications when made director. The utility bills exhibited were in the name of Khan's. The Applicant did not deal with suppliers or recruitment. When ICE raided the premises the translator was Rafiqu Khan so translation of what the Applicant said was inaccurate. He was a scapegoat. On Mr. Rashford's attendance the bar tender was there to serve soft drinks; not alcohol and there was sign up saying no alcohol to be served.

The Sub-Committee then put its questions to the Applicant followed by the Police. Accompanied by the Legal Adviser and the Clerk the Sub-Committee retired to consider the matter.

In its deliberations the Sub-Committee was satisfied that the evidence on the

balance of probabilities showed that the prevention of crime and disorder objective would be undermined if the application was granted and decided the application would be **REFUSED** under section 44 (5) (b) (i) of the Licensing Act 2003.

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.