

Unconfirmed



Minutes of a Meeting of the **Licensing Sub-Committee** held in the Thomas Crisp Room,
Riverside, on **Thursday, 17 October 2019** at **2:30 PM**

Members of the Sub-Committee present:

Councillor Jocelyn Bond, Councillor Linda Coulam, Councillor John Fisher, Councillor Keith Robinson

Other Members present:

Councillor Mary Rudd

Officers present:

Teresa Bailey (Senior Licensing Officer), Leonie Hault (Licensing Officer), Kerryn Woollett (Litigation Lawyer) and Nicola Wotton (Deputy Democratic Services Officer)

Others present:

Mr J Davis (Chief Immigration Officer), Mr G Hopkins (GT Licensing Consultants), Ms Potter (Observer from GT Licensing Consultants) and Mr S Nagendram (Licence Holder)

1 Election of a Chairman

On the proposition of Councillor Coulam, seconded by Councillor Fisher it was

RESOLVED

That Councillor Keith Robinson be elected as Chairman of the Sub-Committee.

2 Apologies for Absence

There were no apologies for absence.

3 Declarations of Interest

There were no Declarations of Interest.

4 Declarations of Lobbying and Responses to Lobbying

There were no Declarations of Lobbying.

5 Review of a premises licence: Village Rise Supermarket, Weston Road, Lowestoft

The Chairman asked the Members of the Sub-Committee and the Officers present to introduce themselves. The Chairman also invited the Licence Holder, Mr Nagendram, Mr Hopkins, Mr Nagendram's representative and Mr Davis, Chief Immigration Officer, to also introduce themselves. All parties confirmed that they had received the meeting papers. Mr Davis, Chief Immigration Officer, confirmed that the Home Office would not be withdrawing their application for a review of the Premises Licence. Mr Hopkins, on behalf of Mr Nagendram, confirmed that he did not wish to request the attendance of any witnesses. The Senior Licensing Officer reported that Mr Hopkins, on behalf of Mr Nagendram, had requested a copy of the Home Office application for the review and a copy had been provided to him and to the Members of the Licensing Sub-Committee.

The Chairman advised that the meeting would be held in public, however the meeting could go into private session, should confidential material need to be discussed.

The Chairman noted that Councillor Bond was present as the Substitute for the Hearing. He explained that the reason for a Substitute was that if anything happened to a Member of the Sub-Committee before the hearing commenced, or during it, the Substitute could take their place. He stated that Councillor Bond would remain for the duration of the Hearing and would retire with the Sub-Committee when it was considering its decision, for training purposes, and asked if there were any objections to the Substitute retiring with the Sub-Committee. No objections to this were made.

The Sub-Committee received report ES/0117 of the Cabinet Member with responsibility for Community Health. The report was presented by the Senior Licensing Officer, who stated that the meeting was taking place because the Home Office, in its capacity as a Responsible Authority, had requested a review of the Premises Licence under the licensing objective 'prevention of crime and disorder.'

The Senior Licensing Officer referred the Sub-Committee to the main points for consideration as identified within the report, including having regard to guidance issued under Section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

There being no questions to the Senior Licensing Officer, the Chairman invited Mr Davis, Chief Immigration Officer, to present his case. Mr Davis reported that an Immigration Enforcement visit was conducted at the Village Rise Supermarket in Lowestoft on 25 April 2019, as they had a search warrant to check the premises for illegal workers. A female member of staff was found working behind the counter. The female spoke little English and had been working at the premises for approximately 4 months, for around the minimum wage. A diary was found on the premises, which contained information on staff rotas, and this showed that the female worker had been working there on a regular basis, often working several shifts per day, from between 8 to 15 hours. Mr Davis reported that her working at the premises was a breach of the conditions of her visa. The female had left the UK in May 2019. It was reported that

the Licence Holder had not asked to see the female's ID or any related documentation, prior to her working at the premises.

Mr Davis requested that the Premises Licence be revoked, due to the Licence Holders' disregard to the legislation concerning the employment of those who were affected by immigration control. The female involved spoke little English and had been left alone to work in the premises for long periods of time. During that time, she was able to sell restricted items such as solvents or alcohol. She had received no training on who these items could or could not be sold to, or any restrictions which were associated with these items, and as she spoke little English she would not have been able to communicate those restrictions to customers. This was extremely concerning and did not assist with the prevention of crime and disorder.

The Chairman then invited questions to Mr Davis.

Councillor Fisher commented on whether the revocation was necessary, as Mr Nagendram had received a Civil Penalty of £10,000 for the employment of a person with no right to work in the UK.

There being no further questions, the Chairman invited Mr Hopkins, from GT Licensing Consultants, who was speaking on behalf of Mr Nagendram to address the Sub-Committee.

Mr Hopkins reported that Mr Nagendram had owned Village Rise Supermarket for 5 years and this was the only shop in the local area. The shop was his only source of income. He was a married father of three children and he was working hard to support his family. The supermarket was staffed by Mr Nagendram, his wife and 2 part time members of staff. There was no prior history of any breaches of his premises licence. He had also recently received a 'test purchase' from Camelot in relation to the National Lottery, which he had successfully passed. It was noted that there were currently very few conditions on his premises licence.

Mr Hopkins reported that Mr Nagendram was very apologetic for his short comings and that he had not wilfully set out to break the law. Mr Nagendram had simply not understood that he had to complete the right to work checks, prior to taking on new staff. His wife had known the female and they had become friends over time. She had introduced her to him and the female had helped out in the supermarket on occasion and had then been offered a job working more regularly. Mr Nagendram had not intended to take advantage of or exploit the female and he had paid her around the minimum wage.

Mr Hopkins explained that once Mr Nagendram had realised his errors, he had not tried to cover them up. Mr Nagendram wished to convey his apologies to Mr Davis,

the Chief Immigration Officer, and the Licensing Sub-Committee. Mr Hopkins reported that this was the first time that Mr Nagendram had been in trouble and he would not do anything wrong again. He urged the Licensing Sub-Committee not to revoke the premises licence, as Mr Nagendram had co-operated fully throughout the whole process and had paid the Civil Penalty he had received.

Mr Hopkins reported that Mr Nagendram would work with GT Licensing Consultants and his solicitor to ensure that all of the correct right to work employment checks were undertaken in future. Mr Nagendram had confirmed that he would not employ anyone again without undertaking the necessary checks and he would be happy for this to be added as an additional condition to his premises licence. It was noted that English was not Mr Nagendram's first language, therefore Mr Hopkins was in attendance to provide some additional support. Mr Nagendram had been proactive, as he had sought assistance from GT Licensing Consultants, had a mentor, and had undertaken the correct checks and now had records for all of his employees. Mr Hopkins reported that Mr Nagendram would accept a short suspension to his licence, however he requested that the licence was not revoked.

The Chairman invited questions to Mr Hopkins.

Councillor Fisher asked if Mr Hopkins had any comments about the allegation that the female did not speak good English? Mr Hopkins reported that he had never met the female, however all of the current staff at the supermarket spoke English to a very high level. He also provided clarification that although the Licence Holder could speak English, he lacked confidence when doing so, particularly in formal situations, however he would ensure that all future employees could speak English to a high standard in future.

The Legal Advisor asked if there were any implications for the Licence Holder, as a result of him paying the female 'cash in hand' rather than via PAYE? Mr Davis stated that he was unable to comment on that, however all the relevant information had been passed on to HMRC and it was up to them whether they decided to prosecute or not. Mr Hopkins added that all Mr Nagendram's staff were now paid via PAYE. Mr Hopkins reported that the female had told Mr Nagendram that she was self employed and was therefore responsible for paying her own taxes.

The Legal Advisor reported that Mr Nagendram had initially told Immigration Officers that the female was not working for him, when he was first questioned during the Enforcement Visit on 25 April 2019. Mr Hopkins stated that Mr Nagendram had been terrified and had done the wrong thing by initially trying to cover up what had happened. He had not intended to deliberately mislead the officers, he had panicked.

Councillor Coulam stated that the Licence Holder had had the shop for approximately 5 years. She queried whether all the staff had been paid via PAYE during those 5 years or

whether others had also been paid cash in hand during that time? Mr Hopkins reported that the Licence Holder's wife and nephew were the other staff members during those 5 years and they had been paid via PAYE. Mr Nagendram had recently employed some more staff and they were also now on PAYE.

There being no further questions, the Chairman invited Mr Davis to sum up.

Mr Davis stated that the current guidance recommended that revocation of the licence should be seriously considered due to the nature of the offence. The Licence Holder should have undertaken the required right to work checks, as required by law, and lack of knowledge was not an excuse. It was also important to robustly uphold the law, in order to act as a deterrent to others who may consider doing the same thing. Also, he stated that the defence of the Licence Holder only having limited English was no excuse. How could he be sure that Mr Nagendram was complying with all of the regulations? How were his staff being trained to enforce and uphold the law, which ultimately protects the public? Mr Nagendram's actions had undermined the Licensing Act and there needed to be consequences for those actions.

Mr Hopkins then summed up on behalf of Mr Nagendram. He reported that the Licence Holder had learned from his mistakes and would undertake all necessary checks of employees documentation in future.

The Licensing Sub-Committee retired to make its Decision, together with the Legal Advisor and the Deputy Democratic Services Manager.

On its return the following Decision Notice was read by the Chairman:

"An application was made for the review of the Premises Licence at Village Rise Supermarket, Weston Road, Lowestoft, NR32 4PT. The current Premises Licence holder and owner of the premises is Mr Saravanai Nagendram. The application was made by the Home Office, Immigration Enforcement.

The application was made because on 24 April 2019 an immigration visit was conducted to the premises. This visit identified one female behind the counter. This female was found to be working in breach of her visit visa.

The owner and licence holder admitted that he had not checked for identification documents. He was subsequently issued with a civil penalty for the employment of one person with no right to work in the UK.

These facts were not disputed by the Licence Holder.

The representative from the Home Office submitted that it was irresponsible to leave the store in the control of a female that spoke little English as it is unlikely that she would be aware of the requirements for the sale of alcohol and other restricted products.

The representative of the Licence Holder told the Sub-Committee that he had owned the premises for 5 years and this was the first breach of any legislation in that 5 year period. Prior to working in this village store, the License Holder worked at Heathrow. He said this wasn't a deliberate breach he simply did not understand his obligations to check for rights to work in the UK. He said he had been cooperative with the investigation, he has paid the civil penalty and he would like to apologise for his failure. Since the incident his obligations have been explained to him by his representative and his representative proposed a condition that GT Licensing Consultants carry out the immigration checks on behalf of the premises for a period of one year.

In reaching its decision the Sub-Committee has had regard to the s.182 guidance as well as its own Statement of Licensing Policy. The Sub-Committee has read the report as well as the additional papers provided and also listened to what was said at the hearing today.

The Sub-Committee noted in particular paragraph 11.27 of the statutory guidance which states "There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously." This then lists a number of activities and includes use of the premises for employing a person who is disqualified from that work by reason of their immigration status in the UK.

In line with the guidance the Sub-Committee has treated this incident as a serious incident which has undermined the licensing objective of preventing crime and disorder.

Furthermore, the Sub-Committee was of the view that given the Licence Holder's previous employment he was more than likely aware of his obligation to check right to work. The fact that he did not check the female's right to work on this occasion showed a disregard to the law and the Sub-Committee was of the view that such a breach could again occur in the future.

Even if the Licence holder was not aware of his obligation to check right to work, given what has been said today the Sub-Committee does not have confidence that he understands this duty moving forward which could lead to further breaches.

Finally, the Sub-Committee was concerned that the License Holder had left the female, who appeared to be untrained and that spoke little English in the store on her own.

This was irresponsible behaviour and showed a disregard to the licensing objectives as the female was unlikely to understand what is required when selling alcohol, for example sale of alcohol to children.

The Sub-Committee has therefore decided that, in all the circumstance, the licence should be revoked.

For information, the Licensee has the right to appeal to Ipswich Magistrates' Court within 21 days of the date they are notified of this Decision.

Date: 17 October 2019"

The meeting concluded at 4:32 PM

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Chairman