

# LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 21 December 2015

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10 am

Present: Councillors: **Glenvil Greenwood-Smith**  
**Barbara Jenney**  
**Andy Mercer**

**Also present:**

**Jenny Walker**  
**(Interim Health Protection Manager)**

**Rita Groves**  
**(Licensing Enforcement Officer)**

**PC David Bryan**

**Mr Masum Afruz**

**Mebs Kassam**

**Louise Tyers**

**Representing**

**East Northamptonshire Council**

**East Northamptonshire Council**

**Northamptonshire Police**

**Premises Licence Holder, Bengal Brasserie**

**Legal Advisor to the Panel**

**Democratic Services Officer**

**1. APPOINTMENT OF CHAIRMAN**

**RESOLVED:**

That Councillor Glenvil Greenwood-Smith be appointed Chairman of the Panel for this hearing.

**2. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**3. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**4. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR BENGAL BRASSERIE, 10 THE BULLRING, CHURCH WALK, THRAPSTON, NN14 4NP**

The Interim Health Protection Manager reported on an application to review the Premises Licence at the Bengal Brasserie, 10 The Bullring, Church Walk, Thrapston, NN14 4NP. The application had been received on 2 November 2015 from Northamptonshire Police and the appropriate Blue Notice had been displayed on the premises during the required consultation period.

The matters for which a review to the premises licence was sought related to the prevention of crime and disorder licensing objective. The main reason for the review request was for knowingly allowing a number of persons to work illegally at the premises.

The Licensing Enforcement Officer had submitted a representation to support the review application. The representation related to a Licensing Inspection held at the premises on 6 November 2015. The Licensing Enforcement Officer had concerns with regard to the Premises Licence Holder's understanding of the Licensing Act 2003.

No questions were put to the Interim Health Protection Manager.

### **Evidence from the Applicant**

PC David Bryan, representing Northamptonshire Police, attended the hearing and spoke on behalf of the Applicant. PC Bryan explained that on 14 October 2015, officers from the Immigration Service were involved in an intelligence led visit to the premises. There were nine male employees on the premises at the time and six of the males had a lawful basis to be in the United Kingdom. Three of the males were identified as offenders and were spoken to during an illegal working interview at the time of the visit. They stated to Immigration Officers that when they had begun their employment no documentation had been requested from them by the employer in relation to their right to work, that they were all to be paid in cash by the employer and that they all did not have National Insurance numbers.

The Immigration Service had provided an update on the case and they had advised that they had issued a civil penalty notice of £45,000 to Bengali Cuisine Ltd as the business could not prove that the correct employment checks had been carried out prior to the employment of the three workers. Two emails had been received from the Immigration Service which advised that two of the illegal workers had stated that they had started work on 12 October 2015 and the third told them that he had worked at the restaurant since 2012 when his visa was valid but he continued to work there when his visa had expired.

PC Bryan suggested that the suspension of the Premises Licence for four weeks for each illegal worker, along with the removal and replacement of the Designated Premises Supervisor (DPS) would act as a deterrent to other licence holders.

### **Questions to the Applicant**

In response to questions from the Panel, PC Bryan stated that he was aware that there was a problem within the trade of employing illegal workers. He had experience of illegal workers in other areas of the County and he was aware of one previous case in the East Northamptonshire area. PC Bryan confirmed that the civil penalty notice had been issued to Bengali Cuisine Ltd on 30 November 2015 and they still had time to either pay the penalty or submit an appeal.

### **Evidence from Rita Groves, Licensing Enforcement Officer**

Mrs Groves advised that due to the police review, she had visited the Bengal Brasserie on 6 November 2015 to carry out a full inspection. The inspection had uncovered various breaches of the Licensing Act 2003. The Premises Licence was not on display as required and Mr Afruz was not aware of where the licence was located. Mr Afruz had also not updated his address on the Premises Licence or his Personal Licence, which was held with Northampton Borough Council. There was no Age Verification Policy in place and no authorisation paperwork showing who was authorised to serve alcohol in the absence of Mr Afruz. Mandatory conditions were also not being adhered to, as it was not clear on the drinks menu what measures of wine were available. Mr Afuz had been encouraged to keep signed and dated staff training records to show that staff had been taught the responsibilities of the sale of alcohol. The main concern was the apparent lack of knowledge of the Licensing Act 2003 by Mr Afruz.

The Panel had no questions for Mrs Groves.

### **Evidence from Mr Masum Afruz, Premises Licence Holder, Bengal Brasserie**

Mr Afruz explained the situation which had required the change of address and confirmed that the licences had now been updated. He was able to show that the drinks menu had now been updated to include measurements of wine to make it more clear to customers. Training documents and an authorisation letter had now also been completed, which the Licensing Enforcement Officer confirmed were acceptable.

### **Questions to Mr Masum Afruz**

In response to questions from the Panel, Mr Afruz was unable to state the four licencing objectives. Mr Afruz stated that he had held a Premises Licence since 2011 and had been at the Bengal Brasserie since that time. He explained that Bengali Cuisine Ltd was a family business of which his brother was the owner and the Bengal Brasserie was the only company under this holding company. Mr Afruz explained that the number of staff working at the restaurant varied and could be up to nine employees at any one time. Mr Afruz explained that the immigration issue had happened whilst he had been abroad on holiday and his brother was in charge of the restaurant. The workers had been told that they did not have the proper paperwork and that they could not be paid until valid paperwork had been received. Mr Afruz's brother had been told by the workers that the correct paperwork would be provided the following week. He now knew for the future that he needed to change the Premises Licence if he was to be away for a long period of time.

*At 10.30am the Panel adjourned to make their decision.*

*The Panel reconvened at 11.53am to announce their decision.*

### **RESOLVED:**

The Licensing Panel has considered this application for a Review of the Premises Licence for the Bengal Brasserie, 10 The Bullring, Church Walk, Thrapston and has taken into account the Interim Health Protection Manager's report, representations from the applicant, PC David Bryan and also considered all relevant representations evidence and documents submitted at the hearing.

The Premises Licence was called in for Review under Section 51 Licensing Act 2003 by two responsible authorities namely the Police and the Licensing Authority under the Prevention of Crime and Disorder Licensing Objective

The determination of the Review was considered under Section 52 Licensing Act 2003 along with Section 182 Guidance and Relevant Case Law particularly Bassetlaw.

The Panel carefully deliberated and considered

- The Licensing Objectives,
- ENC's Statement of Licensing Policy;
- Guidance issued under Section 182 of the Licensing Act 2003.
- The judgement in the case of Bassetlaw District Council versus Worksop Magistrates Court (2007). In particular paragraph 32.1. The Panel in particular noted "deterrence, in my judgement, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State".

- The Panel received both verbal and written evidence from Jenny Walker - ENC's Interim Health Protection Manager.
- The Panel received both verbal and written evidence from Northamptonshire Police Licensing Unit - PC David Bryan
- The Panel received verbal evidence from the Designated Premises Supervisor Mr Masum Afruz.
- The Panel received both verbal and written evidence from Rita Groves – ENC's Licensing Enforcement Officer -

The Licensing Panel having considered all the above are of the unanimous view that, on a balance of probability, the Bengal Brasserie has not been promoting the licensing objective of preventing crime and disorder.

The Committee have therefore decided to:

- 1) Remove the DPS
- 2) Suspend the Premises Licence for 10 weeks
- 3) In addition to the existing condition the Panel decided to add to the Premises Licence the following additional condition:  
*That the Premises Licence Holder maintains a diary of staff training, and that this diary be made available to the Licensing Authority upon demand. This diary must have each entry signed and dated by the Premises Licence Holder.*

The Committee received legal advice in term of:

- 1) The legal test to be applied – Promotion of Licensing Objective of Prevention of Crime and Disorder/Bassetlaw where any decision could have a deterrent bias and Section 182 Guidance
- 2) The appropriateness and proportionate nature of any decision
- 3) Article 1 Protocol 1 Human Rights Act 1998 – Possession of Property whereby a Premises Licence is a possession and any interference must be proportionate and legitimate

The reasons for the decision are:

- 1) Under Section 182 guidance the police are to be the main advocates under the Crime and Disorder Objective
- 2) The nature of the offence committed at the premises under immigration laws
- 3) The number of allegedly illegal workers found at the premises
- 4) The clear breaches of the premises licence conditions
- 5) To deter future breaches of the licensing objectives at the premises and within the community as a whole

The Panel was advised by PC David Bryan that one of the allegedly illegal workers admitted to having worked at the premises without the legal right to do so since 31 March 2012.

The Panel questioned PC David Bryan as to whether the employment of illegal workers was a problem within the community. PC Bryan confirmed that it was and suggested that deterrence was necessary. The Panel decided that it was appropriate in this case.

The Panel also noted that the Licensing Enforcement Officer reported that there had been a failure to adhere to a number of the mandatory licensing conditions and general non-compliance with the Licensing Act 2003.

The Panel seriously considered revoking the Premises Licence; however, they were only minded against this in order to comply with Article 1 Protocol 1 Human Rights Act 1998.

The Decision Notice will be sent out in writing. If any Party, Applicant or Objector who has made a representation, is aggrieved with the Panel's decision, they have the Right to Appeal to the Magistrates Court. That must be done within 21 days of the date given on the Decision Notice, and the modification of the licence conditions do not take affect until expiry of the 21 day period.

**Chairman**