

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 21 December 2017

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00 am

Present: Councillors: Helen Howell
Barbara Jenney
Dorothy Maxwell

Also present:

Representing

Jenny Walker
(Environmental Protection Manager)

East Northamptonshire Council

Rita Groves
(Licensing Enforcement Officer)

East Northamptonshire Council

Adam French
(Senior Environmental Health Officer)

East Northamptonshire Council (witness for
the Licensing Enforcement Officer)

PC David Bryan

Northamptonshire Police (Applicant)

Mr A Morfill

Immigration Service (witness for
Northamptonshire Police)

Mr K Khosru

Premises Licence Holder, Bengal Brasserie

Mr F Fender

Representative of the Premises Licence
Holder

Ruksana Munir

Legal Advisor to the Panel

Louise Tyers

Clerk to the Panel

1. **APPOINTMENT OF CHAIRMAN**

RESOLVED:

That Councillor Barbara Jenney be appointed Chairman of the Panel for this hearing.

2. **APOLOGIES FOR ABSENCE**

There was an apology for absence from Councillor Glenvil Greenwood-Smith and Councillor Dorothy Maxwell was attending in his place.

3. **DECLARATIONS OF INTEREST**

There were no declarations of interest made.

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following item of business because exempt information, as defined under paragraph 17 of Schedule 12A of the Local Government Act 1972, may be disclosed.

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

The Environmental Protection Manager reported that an application to summary review the premises licence at the Bengal Brasserie had been received on 27 November 2017 from Northamptonshire Police. The application was for an expedited review under section 53A of the Licensing Act 2003, which allowed a process for considering whether it was necessary to take action by way of interim steps if those premises were deemed to be a cause for serious crime or disorder. The Police, within their application and certificate, considered that the premises concerned was associated with serious crime. The request for interim steps was considered at a panel hearing on 29th November 2017 and resulted in the premises licence being suspended and the removal of the Designated Premises Supervisor (DPS) until the full hearing.

The matters for which a review to the premises licence was sought, related to the alleged association to serious crime. The reason for the review request followed the execution of an un-notified visit to the premises by the Immigration Service and officers from East Northamptonshire Council where three individuals who did not hold a right to work in the UK were found working at the premises. This was the third time in two years that this offence had been committed.

The Licensing Enforcement Officer had submitted a representation to support the review application. The representation related to the management of the premises in relation to the adherence to their premises licence conditions and the occasions where visits had been made where not all conditions were being adhered to and subsequent letters sent to the licence holder requiring those issues to be remedied.

There were no questions to the Environmental Protection Manager.

Applicant's address to the Panel

PC Bryan, on behalf of Northamptonshire Police, presented his application for review of the premises licence. In 2011, an application for a premises licence had been made in the name of Mr Masum Afruz, the designated premises supervisor was also Mr Afruz. In October 2015, officers from the Immigration Service visited the premises and three males were identified as being in the UK unlawfully and working at the premises. A review of the premises licence was instigated by Northamptonshire Police and at the subsequent hearing, the premises licence was suspended for 10 weeks, the Designated Premises Supervisor removed and a modification was made to the premises licence. In addition to the review, a Civil Penalty Notice was served by the Immigration Service to Bengali Cuisine Ltd for £45,000 in respect of the three males located at the premises. To date no payment had been made towards the Civil Payment Notice. The company, Bengal Cuisine Ltd, was dissolved on 9 February 2016. The company currently operating the Bengal Brasserie was Bengal Tandoori Ltd. The decision of the Licensing Panel was appealed to

Northamptonshire Magistrates and during this process the suspension was reduced to six weeks after negotiations took place between the premises licence holder and the Council.

An application dated 23 December 2015 was made by Mr Khosruzzaman Khosru to transfer the premises licence into Mr Khosru's name. At the same time, Mr Khosru became the Designated Premises Supervisor.

In June 2017, immigration officers and officers from East Northamptonshire Council visited the premises and detained one male. This person was identified as an over stayer who had no lawful basis for being in the UK. A Civil Penalty Notice was issued in respect of the detained male. Northamptonshire Police instigated a review of the premises licence, however during the consultation period a No Action Notice was issued by the Immigration Service stating that the company was not liable for a Civil Penalty, even though the notice stated that the male encountered at the premises had no right to be in the UK. Following the issue of this Notice, Northamptonshire Police decided not to continue with the review.

In November 2017, Immigration Officers visited the premises with officers from East Northamptonshire Council and Northamptonshire Police. Three males were identified as working at the premises with two identified as over stayers who had no lawful basis to be in the UK and one was identified as having leave to be in the UK but with no lawful basis to work. A Civil Penalty Notice was issued in respect of the three males.

Northamptonshire Police were now requesting that the Panel gave consideration to revoking the premises licence as it was their honest held belief that that was an appropriate measure to promote the licensing objectives and prevent the exploitation of vulnerable individuals which also involved defrauding the revenue.

Questions to the Applicant

In response to questions from the Panel, Mr Andy Morfill confirmed that following the visit in November 2017, two of the males had been detained for removal and one that could not be removed was required to report monthly to the Immigration Service. At the visit, Mr Khosru was not present and the manager of the premises claimed to be a waiter, however it had been established on a previous visit that he was the manager and he later admitted to being the manager. Mr Morfill confirmed that for each of the three visits, they had firm grounds to believe that illegal workers would be present. On each occasion there had been enough evidence to put to a court for an entry warrant.

In response to questions from Mr Fender, Mr Morfill confirmed that when the staff house had been entered in November 2017, two specific people had been named on the warrant. It was assumed that one of the people arrested was one of the people that they were looking for. The other person named on the warrant was not present. Mr Fender stated that it was in dispute that the right person had been detained. In response Mr Morfill confirmed that the court had given them the authority to enter the premise and it was assumed that the person detained was the right person. Mr Morfill confirmed that on a subsequent visit on 12 December 2017, no illegal workers had been found. He confirmed that the visit in November 2017 was still under investigation and that a decision had not yet been made. Mr Morfill confirmed that one of the statutory excuses for an employer could be if they had checked with the Home Office about someone's status and this was a service all employers could use. The maximum fine for a Civil Penalty Notice was £20,000 per person.

Licensing Enforcement Officer's address to the Panel

Mrs Rita Groves, Licensing Enforcement Officer, presented her representation in support of the review. In June 2017, whilst Immigration Officers were dealing with the staff, she and her

colleague Mr Adam French, had carried out an inspection under the Licensing Act 2003 which had uncovered various breaches of the Act. Following the previous review hearing in December 2015, an additional condition to the licence was added that a diary of staff training must be maintained and made available, however the manager was not aware of any staff training diary or where it was kept. The fact that this document was not available to an authorised officer was a breach of the licence conditions. The manager could not also provide the Age Verification Policy for the premises, which was a mandatory condition. The manager could not name the four licensing objectives without prompting. Mr French had also checked the fire risk assessment documents, but the diary pages had not been updated since December 2015.

Following the inspection in June 2017, a call was received from someone on behalf of Mr Khosru to make an appointment for him to come to the Council offices as he wanted to bring documentation that was missing on the visit. On 20 June 2017, Mrs Groves and Mr French met with Mr Khosru, who produced various documents including an Age Verification Policy dated 10 June 2017 and training documents for three members of staff. All training notes were dated 10 June 2017, with a statement that Mr Khosru had undertaken the training. Mr Khosru was asked to name the four licensing objectives, which he could not. He was asked what time the premises should close as per the premises licence and he stated 1.30am but they usually closed at 10.00pm, however the licence stated that the premises should close at 11.00pm.

On 8 November 2017, Mrs Groves and Mr French attended the joint operation with the Immigration Service and Northamptonshire Police. They had sat with the manager and asked him some licensing questions. He was asked to provide the staff training records, which he was able to provide. However, he was unable to name the four licensing objectives. He also could not name any of the mandatory conditions on the premises licence. As he had signed a training document in June 2017, his knowledge of the Licensing Act 2003 was still limited. Whilst looking through the training records, it was noted that two people were named whose names were not recognised. The manager advised that neither men worked at the premises any more. When that information was passed on to the Immigration Officers, it came to light that one of the men being questioned in the room at the time was one of the men named on the training record.

Mrs Grove's main concern with the premises was the apparent lack of knowledge of the Licensing Act 2003 and a disregard for the law. This was the third occasion where Immigration Services had apprehended suspected illegal workers at these premises. It was disappointing that the management at the premises had not learnt from the first licensing review and subsequent premises licence suspension.

Questions to the Licensing Enforcement Officer

In response to questions from the Panel, Mrs Groves confirmed that the training documents were required to be made available to authorised officers but the training documents had been brought into the office after the visit in June. The training related to the Licensing Act 2003, licensing activities and the licence. Food and health & safety training was under separate legislation. Mr French confirmed that the premises appeared to have had appropriate food safety training.

In response to questions from Mr Fender, Mr French confirmed that his inspection had taken place a couple of weeks after the November 2017 visit. There were some issues and he would revisit the premises again in January 2018.

PC Bryan had no questions for Mrs Groves.

Licence Holder's address to the Panel

On behalf of Mr Khosru, Mr Fender addressed the Panel. He stated that as with the interim steps, the evidence relied heavily on the previous incident in 2015 which had already been dealt with by review. The June 2017 visit, which was included in the police's evidence, had a No Action Notice issued and resulted in the police's review request being withdrawn. It would be unfair to base decisions on an event from two years ago and the June 2017 visit. Any decisions should be based on the November 2017 visit alone. The 2015 Civil Penalty Notice had been issued to a limited company which had now been dissolved, so was not the responsibility of the licence holder.

At the November 2017 visit, three people had been detained for allegedly having no right to work in the UK. This was still under investigation as it was at the expedited hearing. To date no Civil Penalty Notice had been issued.

The premises had provided information to the Immigration Service by the required date of 4 December. If provided by the required date, they were deemed to be cooperating with the Immigration Service. The documents he had seen, suggested that the people had a right to work and the information had been supplied to the Immigration Service. In response to the statements given by workers at the premises, it was not uncommon for an immigration visit to cause panic and no documents had ever been asked for. The police were inviting the Panel to revoke the licence before the outcome of the investigation was known and was based on information and evidence which was lacking. The Panel was being asked, on a balance of probabilities, to put a business out of business and people out of work.

The Immigration Service had executed a further warrant in December 2017 which had failed to locate any illegal workers.

Revocation was not the most appropriate sanction to promote the licensing objectives. He believed that it was a premature request as the investigation was still on going. The licensing objectives were prescriptive and should not be used as a punishment.

Mr Fender proposed a number of additional conditions which he believed would promote the licensing objectives. Removal of the DPS would ensure a fresh set of eyes at the premises and would ensure that all conditions were complied with.

In conclusion, the Panel was being asked to revoke the licence on a balance of probabilities. Revocation would be a punishment as the November 2017 visit was still under investigation. The proposed conditions would promote the licensing objectives. If the Panel agreed to continue with the suspension of the licence, that would ensure that everything was in place before licensable activities recommenced.

Questions to the Licence Holder from the Panel

In response to questions from the Panel, Mr Khosru confirmed that he understood the importance of the licensing conditions and also health and safety. Mr Fender confirmed that amongst the documents provided to the Immigration Service were copies of payslips, P45s and passports. Staff had been paid in cash but had been provided with payslips and it was difficult to say why the detained staff would say that they were paid cash in hand. In response to a comment that there appeared to be confusion about who the manager was and what their role in the business was, Mr Khosru clarified that he ran the business and if he was not there Mr Afruz took full responsibility. Mr Fender confirmed that Mr Khosru had taken copies of passports but did not use the Home Office website to check the status of staff as he believed that he had done enough. Mr Khosru confirmed that he spent 4/5 days a

week at the premises and when he was there he was there all day. Mr Khosru confirmed that the original company had been dissolved because he had sold the business.

In response to questions from the Environmental Protection Officer, Mr Khosru confirmed that if he was not present Mr Afruz had full responsibility for the premises and that he was aware of that. The proposed conditions had been discussed fully with Mr Khosru.

In response to questions from PC Bryan, Mr Fender confirmed that Mr Khosru was a director of the company behind the Bengal Brasserie when it was dissolved in 2015. Mr Fender confirmed that staff may be paid in cash, but they were provided with a payslip and he could not explain why some individuals said they were not. PC Bryan stated that fingerprints were taken when entering the UK and had also been taken at the inspection which showed that the detained workers had no lawful right to work in the UK, so how could Mr Khosru produce documents which showed that they had a legal basis to be in the country? Mr Fender confirmed that Mr Khosru had been given documents which had been forwarded to the Immigration Service.

Final statement from the Applicant

In summing up, PC Bryan noted that new conditions were being proposed, however the current licensing conditions were not being adhered to. Mr Khosru had dissolved the original company but had transferred the premises licence to himself. On three visits, a number of illegal workers had been found. The statutory guidance stated that for crime and disorder, licensing authorities should look to the police as the main source of advice. The statutory guidance also stated that the licensing authority's role when considering reviews in connection with crime was not to establish the guilt or innocence of an individual but to ensure the promotion of the crime prevention objective. Reviews were also part of the regulatory process and were not part of criminal law and procedure. When conducting a review on the grounds that the premises had been used for criminal purposes, the licensing authority's role was to solely determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. Certain criminal activity that may arise in connection with licensed premises should be treated particularly seriously and this included employing a person who was disqualified from that work by reason of their immigration status in the UK.

Final statement from the Licensing Enforcement Officer

Mrs Groves stated that all of the three incidents were related and relevant and showed a continued disregard to the law and guidance. Additional conditions would not be adhered to and the current licensing objectives were not being upheld due to poor management of the premises.

Final statement from the Licence Holder

On behalf of the licence holder, Mr Fender stated that any sanction should be proportionate and appropriate to the licensing objectives and it was his view that revocation of the licence was not proportionate. The third incident was currently still under investigation by the Immigration Service. He had proposed three additional conditions and he fully understood the concerns that they would not be adhered to, however the licence holder would be provided with assistance for compliance and management. It would be appropriate to suspend the licence until such time as the necessary structures were put in place.

Mr Khosru stated that he was sorry about the last incident but it would be difficult to run his business without a licence.

In response to a question from the Panel, Mr Khosru confirmed that the owners fully understood the importance of today, despite them not being present.

At 11.45am the Panel adjourned to make their decision.

The Panel reconvened at 1.15pm 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 report from East Northamptonshire Council's Environmental Protection Manager, the certificate of the Superintendent, the application submitted by the Police and the subsequent representations by the Police and the representations submitted by East Northamptonshire's Licensing Enforcement Officer. The Panel carefully considered representations made by Mr Frank Fender on behalf of the Premises Licence Holder, Mr Khosruzzaman Khosru.

The Panel also heard evidence from Mr A Morfill, Immigration Officer, and Mr A French, Senior Environmental Health Officer.

The Panel have therefore decided unanimously:

1. To revoke the premises licence relating to the Bengal Brasserie, 10 The Bullring, Church Walk, Thrapston and;
2. To remove Mr Khosruzzaman Khosru as the Designated Premises Supervisor from the licence.

The Panel received legal advice in terms of:

- 1) The licensing object prevention of serious crime and disorder
- 2) Section 182 Guidance (Section 11.24 to 11.28)
- 3) Section 53 Licensing Act 2003
- 4) The legal test to be applied
- 5) Its own statement of licensing policy
- 6) The legal test to be applied – Promotion of Licensing Objectives of Prevention of Crime and Disorder/Bassetlaw where any decision could have a deterrent bias.

The reasons for the decision are:

1. The Panel accepted the representations made by Northamptonshire Police, and gave considerable weight to evidence provided by the Immigration Officer and Senior Environmental Protection Officer and decided that on balance of probability that revocation of the premises Licence for Bengal Brasserie, 10 The Bullring, Church Walk, Thrapston is proportionate and appropriate to deter the premises being used as a vehicle for criminal activity and to prevent the exploitation of vulnerable individuals which may also involve defrauding the Revenue.
2. Under Section 182 guidance paragraph 2.1 it is noted that the Police are the main advocates under the Crime and Disorder Objective. Therefore, the Panel considered this to hold significant weight.
3. The number of allegedly illegal workers found at the premises since the last review in 21st December 2015.
4. The continued breaches of the premises licence conditions.

5. The Panel asked a number of question regarding the management of the premises however the responses from Mr Khosru reinforced the Panels view that there was no management structure in place.
6. The Panel had serious concerns that the Designated Premises Supervisor has failed to adhere to conditions already applied to the Premises Licence which makes it futile to consider further conditions suggested by Mr Khosru representative.

The Decision Notice will be sent out in writing. If aggrieved with the Panel's decision, the Applicant and any Party that has made representation has the Right to Appeal to the Magistrates Court within 21 days of the Decision Notification letter.

7. CONSIDERATION OF INTERIM MEASURES

The Panel considered the interim measures which had been imposed at the Summary Review held on 29 November 2017 and whether they should be maintained or lifted.

The Environmental Protection Manager, Licensing Enforcement Officer and Northamptonshire Police had no further representations to make.

Mr Fender reminded the Panel that they were now required to decide whether to continue with the interim measures during the appeal period and if they felt they were appropriate to maintain. He stated that there was no evidence to suggest that lifting the measures would lead to crime and disorder. He reminded the Panel that the premises could still trade, but just not sell alcohol. Since 29 November, there had been no further incidents and following a further visit by the Immigration Service, no illegal workers had been found. He suggested that the measures should be lifted to allow the licence holder to provide licensable activity until the end of the appeal period.

At 1.22pm the Panel adjourned to make their decision.

The Panel reconvened at 1.55pm to announce their decision.

RESOLVED

The Panel have considered all representations made at today's hearings by all parties. Careful consideration was given to the reasons for the Summary Review held on 29th November 2017 and the Panel have now unanimously made the decision that the interim steps are still relevant and should remain in effect until the end of the appeal process. Namely:

1. To suspend the premises licence with immediate effect relating to Bengal Brasserie, 10 The Bullring, Church Walk, Thrapston and;
2. To remove the Designated Premises Supervisor from the licence

The Panel received legal advice in terms of:

- 1) The licensing object prevention of serious crime and disorder
- 2) The options available to the Panel under Section 53B
- 3) Section 182 and Section 53D Summary Review Guidance
- 4) The legal test to be applied
- 5) Its own statement of licensing policy

The reasons for the decision are:

- 1) The Panel accepted the representations made by Northamptonshire Police, and decided that on balance of probability that continued suspension is appropriate to deter the premises being used as a vehicle for criminal activity and to prevent the exploitation of vulnerable individuals which may also involve defrauding the Revenue.
- 2) The Designated Premises Supervisors continual failure to adhere to conditions already applied to the licence makes futile any consideration of further conditions.

The Decision Notice will be sent out in writing. If aggrieved with the Panel's decision, the Applicant and any Party that has made representation has the Right to Appeal to the Magistrates Court within 21 days of the Decision Notification letter.

Chairman