

Public Document Pack
LICENSING SUB COMMITTEE

24 JANUARY 2020

Present: Councillors Cox, O'Callaghan, Patmore (Chair) and Roberts

40. APPOINTMENT OF CHAIR FOR THIS MEETING

In accordance with the terms of reference of the Licensing Committee, the Chief Legal Officer invited nominations for the appointment of Chair for the duration of the meeting. Councillor Roberts moved that Councillor Patmore should take the Chair. This was seconded by Councillor O'Callaghan.

RESOLVED (unanimously) that Councillor Patmore be appointed as Chair for the duration of the meeting.

41. APOLOGIES FOR ABSENCE

None

42. MINUTES OF PREVIOUS MEETING

RESOLVED (unanimously) that the minutes of the meeting held on 27 September 2018 be approved as a true record

43. DECLARATIONS OF INTEREST

None

44. NOTIFICATION OF ADDITIONAL URGENT ITEMS

None

45. REVIEW OF PREMISES LICENCE. OCEAN SPICE, 43 WHITE ROCK, HASTINGS

Councillor Patmore set out the procedure that the Sub-Committee would adopt (in accordance with Standard Practice).

The Licensing Manager, Mr Brown, presented the report of the Assistant Director of Environment and Place in respect of the application made on 26th November 2019 for the review of an existing premises licence for Ocean Spice, 43 White Rock, Hastings. This was from HM Inspector of Immigration, Home Office, made under Section 51 the Licensing Act 2003. During the 28-day consultation the police made a representation under the licensing objectives of Prevention of Crime and Disorder and Public Safety.

HM Inspector Andrews of Immigration made his submission on the basis of Prevention of Crime and Disorder. The application for review was based on the number of visits made to the premise and the number of individuals found at the premise who were working illegally.

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The HM Inspector went through a timeline of involvement with the premises as followed;

- **4th October 2018-** Based on intelligence Immigration made its first visit to the premises. They found 3 suspected illegal workers. After investigation 2 workers were found to be illegal and a Civil Penalty of £30,000 was issued. This fine has not been appealed or paid.
- **19th January 2019-** During the previous visit an individual of interest evaded immigration, this gave them cause to return. During this visit 3 suspected workers were found, 2 of which were found on the first visit. After investigation 3 workers were found to be illegal and a Civil Penalty of £45,000 was issued. This fine has not been appealed or paid.
- **14th November 2019-** During this third visit 3 suspected illegal workers were found. After investigation 1 worker was found to be illegal and a Civil Penalty of £20,000 was issued. This fine has not been appealed or paid.

The HM Inspector summarised that between 4th October 2018- 14th November 2019 3 visits had resulted in the discovery of 5 illegal workers and civil penalties totalling £95,000 had been issued. None of these penalties had been appealed or paid.

The HM Inspector added that on each of these visits the Immigration Officers had experienced hostile response on each occasion. As a result of this they asked Sussex Police to support their visit of 14th November 2019 due to the previous aggression and violence. During this visit 3 members of staff were arrested due to their behaviour. This is currently under investigation.

The Chair invited questions.

The Licence Holders Legal Representative, asked when 3 people are referred and only 1 fine is given out is it right to infer that 2 people were not then working illegally?

The HM Inspector responded that when a person is referred Civil Penalties will look at the evidence. If there was not enough evidence to deem the other 2 people as illegally working, then no civil penalty would be issued.

The Chair invited Sussex Police as the statutory consultee to make their representation. Police Inspector Lovell made the representation based on the grounds of the Licensing Objectives of the Prevention of Crime & Disorder and Public Safety.

Police records indicate that members of staff at Ocean Spice were alleged to have been involved in a number of violent incidents since 21st February 2019 in and around the restaurant and elsewhere. A number of these incidences have been concluded without charge. There are some outstanding that are still under investigation.

Police believe that a general pattern is evident in the behaviour of the staff, and in particular members of the Rahman family who own the restaurant, to act as a group when dealing with problematic customers or incidences.

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Police Inspector Lovell reported the following timeline of events to the Licensing Sub Committee;

- **Thursday 5th December 2019-** 10 males fighting outside British heart Foundation shop at 41 White Rock. Due to dispute with neighbouring restaurant Nazar. After escalating argument an individual from Nazar had assaulted Siddiqur Rahman, Ocean Spices DPS (Designated Premises Supervisor)
- **Thursday 14th November 2019-** During the execution of the search warrant by HM Immigration that identified 3 suspected illegal workers at Ocean Spice, 3 members of the Rahman family were arrested for either obstructing a Police Officer or obstruction of an Immigration Officer. Threats were also made against Officers by members of the Rahman family. This matter is still being investigated.
- **Saturday 28th September 2019-** Dispute over payment for meal at Ocean Spice that led to claims of physical assault outside restaurant between staff members and a customer. Customer sustained injuries consistent with Grievous Bodily Harm. This matter is still being investigated.
- **Monday 23rd September 2019-** A traffic warden was threatened with violence when attempting to issue a parking ticket for a vehicle parked on double yellow line near Ocean Spice. The confrontational individual was Shahnur Rahman son of the Siddiqur Rahman (DPS for Ocean Spice). This has been investigated by police as a S.4 Public Order offence; a summons has been issued.
- **Tuesday 13th August 2019-** Police were called to an incident of theft in a convenience store located at 35 White Rock. The suspect of theft alleged Shahnur Rahman had assaulted him. After an investigation the matter was filed due to the victim declining to support the prosecution.
- **Saturday 10th August 2019-** A male was assaulted by 5 males. Victim sustained injuries consistent with Actual Bodily Harm. Shahnur Rahman and brothers Mominur Rahman & Ridwanur Rahman and cousins Shawjan Khan & Mejan Khan were arrested. After a lengthy investigation the matter was filed due to lack of support from the victim and no witnesses.
- **Sunday 26th May 2019-** Male was allegedly assaulted and received injuries consistent with Actual Bodily Harm by Ridwanur Rahman and Shahnur Rahman. Victim had previously assaulted Ridwanur early in evening. Shahnur had met Ridwanur after this when the alleged assault took place. Both became threatening and abusive with Officers that a Taser was drawn. After an investigation it was decided that, as there was no realistic prospect of a court conviction, the matter should be filed.
- **Tuesday 14th May 2019-** Former staff member receives injuries consistent with Grievous Bodily Harm at the premises allegedly by the 3 Rahman brothers on

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instruction of their father Siddiquir Rahman. This was due to the staff member quitting his job after allegedly witnessing Siddiquir Rahman physically and verbally assaulting a female member of staff in the previous week. After an investigation the matter was filed pending any further developments.

- **Thursday 21st February 2019-** Male alleged to of been assaulted by brothers Shahnur, Ridwanur and Monimur in London Road near the Co-op. The victim was a former staff member of Ocean Spice who left after disputing holiday pay. In the absence of witness statements and CCTV to corroborate the victim's account it was decided to take no further police action.

Given the number of incidents involving the Rahman family including Mr Siddiquir Rahman the Designated Premises Supervisor, and their violent nature Sussex Police have no hesitation in supporting the review brought by HM Immigration and agreed that revocation of the licence should be the outcome of the review hearing.

The Chair invited questions.

The Licence Holders Legal Representative, asked questions concerning the incidents. Inspector Lovell confirmed that out of all the incidences none had been to court but 2 where still being investigated (14th November 2019 and 28th September 2019). The final incident on 5th December 2019 was one where Siddiquir Rahman was assaulted.

The Legal Representative asked if filming the police during this incident was considered illegal as the police written submission references this. Inspector Lovell confirmed it was not adding that they were concerned about the Rahman family behaviour due to them being aggressive and uncooperative.

There were no further questions.

The Chair invited the Licence Holder to make their submission. They requested a 10-minute adjournment which the Chair granted

(Meeting adjourned at 10.35am)

(Meeting reconvened at 10.47am)

The Licence Holders Legal Representative outlined their submission.

They did not accept the evidence of HM Immigration in relation to the Civil Penalty notices stating that they are in the process of appealing them.

When the licence holder initially received the notices, he took advice from his accountant who assured him that the matter was being dealt with. Mr Rahman accepts that this was not the case and he had been given incorrect advice. He now realises that he should have checked that the notices had been appealed.

Mr Rahman does not accept that he had knowingly taken on illegal workers. The process of recruitment that he said he used was to give workers a trial period of work. The workers were expected to provide supporting documents for their right to work

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legally but they would be allowed to provide these at a later date. This was his system of verification but accepts that it was inadequate.

The Licence Holder submitted additional supporting documents. Part of this was a new staff recruitment policy. This would be overseen by a dedicated recruitment manager. Prospective staff members would not be allowed to be employed, allocated shifts or paid until they have provided relevant documents proving their right to work as required by the Home Office.

,In response to the incidences highlighted by Sussex Police they had taken place outside of the premises and were not related to Mr Rahman not fulfilling his licensing objectives. The latest incident mentioned by the police was one in which Mr Rahman was assaulted.

Ocean Spice had policies in place and were taking additional steps for prevention of nuisance and protection of children from harm using processes such as challenge 25 for alcohol purchases.

The legal representative stated that there had to be a sense of proportionality in relation to the review. Revocation of the premises licence is not the only option available to the licensing committee and in regard to the 5 options the Licensing Manager detailed in his report, the following is suggested for the committees consideration;

- **To modify the conditions of the licence-** Add the condition that right to work checks must be completed rather than just through the voluntary employment process
- **To remove the Designated Premises Supervisor (DPS)-** If the committee wanted to remove Siddiqur Rahman as DPS, Monimur Rahman would be willing to take on this role and would be very suitable. He is already a director of the company
- **To suspend the licence for a period not exceeding three months-** This would have a substantial effect on the premises. This would allow them to get better processes in place

In relation to keeping Siddiqur Rahman as the DPS, the additional supporting document pack contains a number of positive character references for him. It also contains a positive reference for Monimur Rahman.

The additional supporting documents also contain employment documents such as individual employment records and P45s. The intention by the premise was to employ these workers legally. Workers had promised to supply the relevant documents and, in some incidences, supplied false documentation.

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SIA registered doormen could also be added as a condition to help meet the licensing objective during potential times of disorder although this would incur large financial cost to the business.

This is the first time the premises licence has been reviewed by the committee and believes revoking the licence is too strong a penalty for the first time. Imposing conditions on the licence would be a sufficient and proportional penalty for these offences.

The Chair invited questions.

The Licensing Manager asked if the proposed new DPS had a personal licence. Monimur Rahman responded he did not. The Licensing manager explained that a personal licence was needed to become a DPS. The Licence Holders Legal Representative advised that if the Licensing committee decided to remove the current DPS the process to obtain a personal licence would be completed with 28 days or sooner if needed.

The Licensing Manager asked if there was a recruitment process prior to the one proposed and if so, did they have evidence of this. The Licence Holders Legal Representative responded that Mr Rahman had a system where he believed he was recruiting legitimate workers. He was making efforts to record their documents. This can be submitted to the committee.

The Licensing Manager questioned the suggestion that the committee place a condition on the licence that right to work checks must be completed. He stated that this was already a legal requirement for licensed premises. The Licence Holders Legal Representative responded that this is correct but by adding the condition on the licence the committee and HM Immigration could be assured that this legal requirement is met. It would also mean if this was not met revoking the licence would be a likely.

The Chair invited Committee members to ask questions.

Councillors asked why the proposed Staff Recruitment Policy wasn't implemented after the first HM Immigration visit. The Licence Holders Legal Representative responded that they did not accept the charges relating to the fine. The advice they were given at the time led them to believe that the matter was in hand and would be appealed. They now know that advice was incorrect. The new Recruitment policy recognises the seriousness of that situation and addresses it

Councillors asked if the Fines totalling £95,000 were being appealed. The Licence Holders Legal Representative advised that the fines are being appealed but wasn't sure at this stage if a formal appeal had been submitted. They are doing this at a later stage due to receiving incorrect legal advice at the time when the fines were first issued.

Councillors asked that after the first visit a fine of £30,000 was issued. Why was this not appealed. The Licence Holders Legal Representative responded that their

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accountant had advised incorrectly that they had the matter in hand. Mr Rahman believed that this was the case.

Councillors asked additionally that 3 months later, a further visit resulted in a £45,000 fine which brought the total up to £75,000, why didn't the licence holder appeal at that time? The Licence Holders Legal Representative responded that Mr Rahman did not understand the seriousness of the issue and the accountant had again told Mr Rahman that everything was under control.

Councillors asked if Mr Rahman still employed the same accountant. He confirmed he did.

There were no further questions.

The Chair asked Councillors if they needed any clarification from the Licensing Manager. Councillors asked what was the statutory time limit in appealing the Civil Penalty notices issued by HM Immigration? HM Immigration answered this question instead and advised that it was 28 days. The Licence Holders Legal Representative added that it is possible to appeal outside the time limit depending on circumstances. Councillors asked if any official appeals had been submitted. The Chair was shown an email from the 4th December by the Licence Holder that indicates that they are attempting to appeal some of the notices

The Chair asked for summaries.

In their summary the Licensing Manager advised that this was a statutory request for a review of the premises licence based on Crime & Disorder and Public Safety offences. If the committee choose to either suspend or revoke the licence Ocean Spice wouldn't be able to sell alcohol or offer late night entertainment or refreshments. It would still be able to operate as a restaurant up to 11pm.

In their summary Sussex Police would argue that the operational & management style of the premises was directly linked to licensable activities. The DPS has a responsibility to uphold the licensing objective of Prevention of Crime and Disorder. The Police contend that the evidence of violent incidences, resistance to authorities and repeated occasions of employment of illegal workers question the suitability of the premises to uphold this licencing objective. On this basis they recommend revocation of the premises licence.

In their summary HM Immigration advised they are seeking a full revocation of the licence and that this is proportional and a necessary response to the number of occasions of illegal workers found at the premises. These breaches had happened over a long period of time (13 months) where 5 workers were identified to be working illegally. On each occasion the business was given a substantial financial penalty totalling £95,000 which currently has not been paid or formally appealed. Most businesses would have a robust recruitment policy in place. They would expect the premise to have had one but especially after the first, second and third visit from HM immigration. A full revocation would act as a deterrent from other employers recruiting illegal workers. Illegal workers have no rights there is no guarantee of basic employment protection and pay. The Licence Holders Legal representative had

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previously advised that this was a 'first strike' offence but HM Immigration response to that is that they have visited the premises on 3 separate occasions and found 5 people illegally working. HM Immigration believe that amendments to the licence would be insufficient and are seeking revocation of the licence.

In their summary the Licence Holders Legal Representative reiterated that none of the illegal workers were exploited as HM Immigration had indicated. Sussex Police have also indicated that the committee are not here to act as arbitrators of guilt or innocence. The committee has been asked to consider revocation, but this is too strong a step. It is suggested that the following approach be considered instead;

- **To modify the conditions of the licence-** Add the condition that right to work checks must be completed prior to employment.
- **To suspend the licence for a period not exceeding three months-** This would have a substantial effect on the premises.
- **To remove the Designated Premises Supervisor (DPS)-** It would give the opportunity for a new person to build a working relationship with Licensing, Police and Immigration.

The committee can look at these suggested solutions and add other conditions as necessary. They believe that these were sufficient rather than revoke the premises licence.

The Chair thanked everyone for their submissions. Chair explained that Councillor Cox was observing proceedings and the deliberation by the committee but would have no part in the decision making.

RESOLVED (unanimously) to REVOKE the premises licence

The reason for the decision was:

The committee has listened carefully to all submissions and believe that revocation is the only option available to the committee at this time. The licensing objectives have been seriously undermined.

Our role is to solely determine what steps should be taken in connection with the premises license, for the promotion of the crime prevention objective.

The committee was shocked to read the witness statements that the police and immigration services were subject to a hostile reception and a lack of cooperation. We are particularly shocked by the number of alleged violent incidents and although we are not here to pass judgment of guilt pertaining to those incidents, we can be mindful when making our decision.

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Licensing guidance at para 11.27 states that, for employing a person who is disqualified from work by reason of their immigration status in the UK, should be treated particularly seriously.

There have been three occasions where the applicant has been deemed to have employed illegal workers over a prolonged period of time. We have seen no formal evidence of past appeals being lodged and the fines still remain outstanding.

Whilst we have been asked to consider certain conditions on the license, we believe any conditions wouldn't stop the licensing objectives from being undermined in the future because the premises would still be under the same organisational control.

46. ADDITIONAL URGENT ITEMS (IF ANY)

None

(The Chair declared the meeting closed at. 12.24 pm)

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