

Meeting	Licensing Hearing
Date	19 May 2014
Present	Councillors Boyce, Cuthbertson and McIlveen

95. Chair

Resolved: That Councillor Boyce be elected as Chair of the meeting.

96. Introductions**97. Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal, prejudicial or pecuniary interests they may have in the business on the agenda. None were declared.

98. The Determination of an Application for the Review of a Premises Licence by PC 952 Mick Wilkinson Section 52(2) in respect of Indian Ocean Tandoori Restaurant, 37 The Green, Acomb, York, YO26 5LL. (CYC-009204)

Members considered an application for the review of 3 premises licences by PC Mick Wilkinson in respect of Indian Ocean Tandoori, 37 The Green, Acomb, York, The Kings Ransom, 12A King Street York and The Jaipur Spice, 103 Haxby Road, York.

In coming to their decision, the sub-committee took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the licensing objectives. The following were taken into account:

1. The review application form.
2. The Licensing Officer's report and her comments made at the hearing. She advised that PC Mick Wilkinson, North Yorkshire Police was the review applicant for all 3

premises. Consultation had been carried out correctly. She also advised that there was a typing error at page 41, paragraph 15 of the Report regarding Kings Ranson, which should read “ The premises fall within the cumulative impact area”.

3. The representations by the Review Applicant’s Solicitor and his witnesses at the hearing. The representation by the Review Applicant’s Solicitor and his witnesses at the hearing. It was accepted by the Applicant that a criminal prosecution was not being pursued by the Secretary of State in relation to the 3 investigations, and no criminal proceedings had been brought against Mr Zaman in relation to the employment of illegal workers pursuant to S.21 of the Immigration, Asylum and Nationality Act 2006 in the past. Any such breaches had been dealt with under civil proceedings by way of a financial penalty (s15 of the 2006 Act). Notwithstanding this, the Sub-Committee was asked to consider S.182 Guidance at paragraph 11.27, which advises “...*that certain criminal activity ... should be treated particularly seriously ... These are the use of the licensed premises ... for knowingly employing a person who is unlawfully in the UK who cannot lawfully be employed as a result of a condition on that person’s leave to enter;*” Paragraph 11.28 states that “ *the police .. will use the review procedures effectively to deter such activities and crime ... where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence, even in the first instance, should be seriously considered.*” It was submitted that the licensing authority could make a finding on the facts that Mr Zaman had knowingly employed people and that criminal activity is taking place on the premises, based on the evidence put forward at the hearing, and that this is affecting the licensing objective of prevention of crime and disorder. It was submitted that as Licence Holder for all premises and as Designated Premises Supervisor of two of the premises, Mr. Zaman should be aware of what is required of him, in terms of checking that employees are legally entitled to work. A representative of the Border Agency spoke to confirm details of the visits to the premises which

took place in February 2014 and provided details of the services available for employers to carry out checks on potential employees, including a helpline, website, and an option to become a licensed “Trusted Employer” with the Home Office. She stated that in other similar situations locally, employers had responded by taking this advice to ensure thorough checks in the future. The police commander for York was also in attendance and spoke in support of the review applications. He submitted that the wider impact of this type of criminal activity should be noted, in terms of the impact on business, employment opportunities for locals, the lack of protection for the illegal workers, lack of access to the NHS, and food safety training, which impacts on the community. It was submitted that despite no criminal proceedings, the sub-committee could find that criminal activity was taking place; evidence suggests that Mr Zaman turned a blind eye. He could have made a call for advice about paperwork. The Sub-Committee was invited to revoke all 3 premises licences on this basis. In respect of the written legal submissions made by Mr Zaman’s solicitor, it was submitted with reference to his paragraph 22, that it was not the case that the decision to proceed by way of civil penalty led to a finding that no criminal activity was taking place. The decision to dispose of the matter by way of civil penalty was a policy decision.

4. The representations made on behalf of the Premises Licence Holder, Mr Zaman, by his Solicitor. A written legal submission had been provided to the Sub Committee prior to the hearing. It was submitted that the police review was ill-founded in that there was no evidence that criminal activity of the nature described in paragraph 11.27 of the S182 guidance was taking place. It was submitted that as the civil penalty under S15 of the 2006 Act has no criminal ramifications whatsoever, was issued against Mr Zaman without even investigating, and the fact that he was not even interviewed, meant that there was no evidence on which the Sub-Committee could draw an inference that his client had knowingly employed illegal workers. In any event, the S15 penalty notice in 2013 was withdrawn, as it had been issued against a Mr Choudhary by the Home Office in error, and was never re-issued against Mr Zaman. The Jaipur Spice S15 penalty notice in 2013 was

cancelled by Court Order, as the Home Office were satisfied that Mr Zaman had made sufficient checks (the visa had been tampered with to show a different end date. The Home Office do not expect employers to be experts in respect of forged documentation). Three further penalty notices were issued in February 2014, and Mr Zaman has instructed his solicitor that these be appealed, on the basis that he has made the relevant checks. His solicitor envisages that these will be withdrawn by the Home Office shortly. The Sub Committee was invited to take no action.

In coming to their decision, the Sub-Committee considered the following options:

- Option 1 Modify the conditions of the licence (i.e. to alter, omit or add any new condition).
- Option 2 Exclude a licensable activity from the scope of the licence.
- Option 3 Remove the designated premises supervisor.
- Option 4 Suspend the licence for a period not exceeding 3 months
- Option 5 Revoke the licence.

Members decided to remove designated premises supervisor for all 3 premises in order to uphold the licensing objective of the prevention of crime and disorder under the Licensing Act 2003 (Option 3).

The removal of the designated premises supervisors comes into effect when the time period for making appeals against the decisions has expired or when any appeals have been disposed of.

Reason for the Decisions

The Sub-Committee considered that there was insufficient evidence to show Mr. Zaman knowingly employed people not entitled to work in the United Kingdom and as such, Section 182 guidance, paragraph 11.27 relating to serious criminal activity

was not engaged. Consequently, revocation was not considered to be warranted in these cases, having regard to the evidence available.

However, having regard to the S182 guidance as a whole, and the licensing objective of the prevention of crime and disorder, the Sub-Committee had concerns that from the evidence of the Border Agency, in particular, a number of individuals found at the restaurants are now awaiting deportation, and people not entitled to work in the United Kingdom were present at all three premises on more than one occasion, so that it appears that this was an established practice.

It is a concern of the Licensing Authority that there was evidence that the Designated Premises Supervisors were not being as thorough as they could be in ensuring adequate due diligence checks were being made regarding the entitlement of employees to work in the United Kingdom. Advice and assistance is available from the Home Office, and this has not been sought by Mr Zaman. Whilst there was no evidence before the Sub-Committee of the serious criminal activity stated at paragraph 11.27 of the s.182 guidance, there was sufficient evidence of an established practice that people not entitled to work in the UK were working at the restaurants. Failure to take more diligent steps to manage employment of workers to ensure they were entitled to work in the UK was held to be a failure to promote the Licensing Objective of prevention of crime and disorder. The decision was therefore taken to remove all 3 designated premises supervisors.

A 'Yellow card Warning' was also issued to be displayed in all 3 premises 12 months and this will become a condition of the licence.

The Sub-Committee highly recommended that Mr Zaman applies to become a trusted employer of the Border Agency and makes full use of the advice and assistance they can give him. He was also reminded that licences are always open to further reviews if any applications are made from any responsible authorities.

Resolved: That the Sub-Committee determined the application for a review of the 3 premises licences and chose option 3.

Reason: To address the issues raised by the review applicant.

99. The Determination of an Application for the Review of a Premises Licence by PC 952 Mick Wilkinson Section 52(2) in respect of The Kings Ransom Restaurant (also known as Jaipur Spice), 12A King Street, York, YO1 9SP (CYC-009200)

Due to all 3 review applications being by the same review applicant and the premises being operated by the same individual, and the issues being the same across all 3 premises, the decision was taken to consider all 3 applications combined. Please see minute item 98.

100. The Determination of an Application for the Review of a Premises Licence by PC 952 Mick Wilkinson Section 52(2) in respect of The Jaipur Spice, 103 Haxby Road, York, YO31 8JP (CYC-009208)

Due to all 3 review applications being by the same review applicant and the premises being operated by the same individual, and the issues being the same across all 3 premises, the decision was taken to consider all 3 applications combined. Please see minute item 98.

Councillor Boyce, Chair
[The meeting started at 10.00 am and finished at 12.30 pm].