

MINUTES

of the

LICENSING COMMITTEE HEARING

held on 29 June 2023 at 11am

Present:

Councillor R. Lee (Chair of Hearing)

Councillors D. Clark and A. Davidson

1. [Apologies for Absence](#)

No apologies for absence were received.

2. [Declaration of Interests](#)

All Members were reminded to declare any Disclosable Pecuniary interests or other registerable interests where appropriate in any items of business on the meeting's agenda.

3. [Licensing Act 2003 – Application to review a Premises Licence – Wood Grill Restaurant, 8 Baddow Road, Chelmsford, Essex, CM2 0DG](#)

The Committee considered an application for a review of the premises licence relating to Wood Grill Restaurant, 8 Baddow Road, Chelmsford, Essex, CM2 0DG pursuant to section 51 of the Licensing Act 2003 made by the Home Office. The application was made on the grounds of the prevention of crime and disorder and the protection of children from harm.

It was noted by the Committee that there were five options namely;

1. To Modify the conditions of the licence either permanently or for a period not exceeding three months.
2. To exclude a licensable activity from the scope of the licence, either permanently or for a period not exceeding three months.
3. Remove the Designated Premises Supervisor
4. To suspend the licence for up to three months
5. Revoke the licence

The following parties attended the hearing and took part in it:

Applicants

Home Office Mr Mahesh Mehmi and Mr Raj Hundal

Licence Holder

Mr Benabid

Mr Denny (Legal representative)

Supporting Application

Essex Police: Gordon Ashford, Rachel Savill, and Gary Burke,

The Chair advised that the written representations had been read and considered by the Committee in advance of the meeting.

The Chair invited the Home Office, who had applied for the review to present their case to the Committee. They informed the Committee that they visited the premises on 4th April 2023, after receiving intelligence of illegal working taking place. They encountered two foreign nationals who had expired visit visas and who advised immigration officers that they had not presented any documents when applying to work at the premises. Immigration officers also found a 17 year old female working behind the bar who was responsible for managing the business, they were not questioned further due to being a minor. Immigration officers interviewed the two foreign nationals, who admitted to working at the premises, whilst having no right to remain or work in the UK. They also informed officers that they were paid £70 per day.

The Committee also heard that if as claimed by the licence holder, that immigration officers had been aggressive, then this would be proved by CCTV. The Committee were also informed that the photos of Irish passport cards provided by the Licence holder on the day of the hearing, could not be verified and had not been presented on the day of the immigration visit or in between then and the hearing.

The Committee were informed that revocation of the premises licence had been sought to prevent illegal working taking place in licensed premises and to protect children from harm. The Home Office officers stated that the guidance detailed that in a case such as this, revocation should be considered.

Essex Police who had supported the application, informed the Committee that they would have also requested a review if the Home Office had not done so and supported the request for a revocation.

The Chair invited the licence holder and their legal representative to address the Committee. They provided a summary of the business, which consisted of two other nearby restaurants and that the Chelmsford branch had closed in April for commercial reasons. The Committee heard that each restaurant had robust evidence checks for new employees and copies of these were on site on the day of the immigration visit. They also stated that the initial warrant had been for a member of staff who had already left employment from the restaurant. They informed the Committee that the rules had not been overlooked and management had exercised them to the best of their ability. It was also noted that the quoted £70 days' pay was for a shift rather than a full day. They also referred the Committee to the photos of Irish passport cards that had been provided, just prior to the hearing and stated that checks had been carried out on the documents correctly and they were valid at the time. They stated that management knew the rules well for hiring staff and carrying out the required right to work checks.

They also stated that the 17 year old female who was on the premises at the time of the visit was the trainee assistant manager, but primarily a waitress. The two customers seen drinking by immigration officers, were (they claimed) friends who had been served a soft drink with the permission of the owner, therefore no alcohol

had been sold by a minor. Furthermore, an older member of staff, who held a personal licence, was on the premises at the time and would have authorised the sale of alcohol if required.

The Committee heard that the review had come as a shock to the premises management, and they wished to defend themselves against the serious allegations.

In response to a question from the Committee, the Home Office confirmed that they had received the photos of the Irish passport cards just prior to the hearing, but stated they were not fully legible and had not been presented at any other time. They stated that at the time of the immigration visit, neither of the two foreign nationals arrested, claimed to be Irish. It was also noted that a follow up house visit, did not reveal any evidence that they were Irish. (It was accepted that had the two individuals in question been Irish nationals then they would have been entitled to reside and work within the UK.)

In response to a question from the Committee's legal advisor, the Licence Holder stated that they relied on the fact that in their view they had carried out all the necessary checks before employing the two individuals and had no reason to believe the documents were fraudulent. This being the case, they were at a loss as to what else they could be expected to do to verify eligibility to work.

The Licence Holder questioned the Home Office, as to whether any checks for Irish or UK national right to work documents existed, such as the share code option for non-UK or Irish residents. The Home Office representative stated that details on how to accurately check right to work documents were widely available online. The Licence Holder also stated that on the phone to immigration officers, whilst the visit took place, they advised where documentation (records) confirming the carrying out of right to work checks could be found (i.e., on the restaurant premises) but this was not looked at. The Home Office representative did not seek to refute or otherwise comment on the Licence Holder's assertion that the immigration officers had not taken up the invitation to inspect the records

The Home Office representative also answered a further question from the Committee's legal advisor and stated that the full guidance on how to carry out a right to work check was available on their website and best practice was to carry out all checks of physical copies and seek proof of address. They also stated that neither of the foreign nationals, presented any Irish documents on the day of the visit or claimed to be Irish nationals. The Licence Holder also stated that both workers had UK bank accounts, so the passport cards must have been used to open those accounts as well. They confirmed, however, that where Irish nationals were concerned there was not the share code option available to check nationality, as compared with the position where nationals of other Countries were concerned. They conceded that if, on the face of it, the Irish passports cards appeared genuine then whilst it might be possible for the business owner to carry out further checks by contacting the Irish Government, the actual guidance did not require this to be done. At this point of the meeting, the Committee retired to deliberate. It was noted that due to the remote nature of the meeting, the decision would be circulated to all parties within a few working days via email.

The Committee gave careful consideration to the relevant representations both written and made in the course of the remote hearing.

RESOLVED that having regard to all the circumstances including the evidence before it, the Committee did not on balance consider it appropriate for the promotion of the relevant licensing objectives (in this case, the prevention of crime and disorder and the protection of children) that the Premises Licence be revoked on this occasion.

Reasons for Decision

Employment of Illegal workers

- 1)** The Committee was satisfied, on the balance of probabilities, that the two foreign nationals found on the premises at the time of the visit by officers from the Home Office Immigration Compliance and Enforcement team were illegal workers. The Home Office evidence was compelling. The Committee was satisfied on the evidence before it that the Irish passport cards were, in fact, forgeries. The prevention of crime and disorder licensing objective was engaged.
- 2)** The Committee viewed the employment of illegal workers as an extremely serious matter indeed and was mindful of the guidance contained within paragraph 11.24 – 11.28 of the revised Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (to which the Committee was required to have regard to when determining Review applications). An incident involving the employment of illegal workers on licensed premises would normally result in revocation of the Premises Licence.
- 3)** The Committee had taken into account the fact that in this particular case the Licence Holder had been adamant that he had exercised all due diligence in carrying out the requisite right to work checks before taking on the two individuals as employees and that they had produced what appeared to be genuine Irish passport cards. (Had the two individuals concerned been Irish nationals then they would have had the right to reside and work within the UK.) The Home Office representative had confirmed that where Irish nationals were concerned the share code option was not available to business owners to check nationality. The Home Office representative had further conceded that if, on the face of it, the Irish passports appeared genuine then due diligence did not require further checks to be carried out to establish nationality. (The Home Office representative was unable, at the hearing, to point to any guidance requiring prospective employers to undertake further checks in such circumstances.)
- 4)** The Licence Holder claimed that he had kept a record of these right to work checks (including copies of the documentation) on the restaurant premises and that the immigration officers had been invited to inspect the same when they visited the premises but had not taken up that invitation. The Committee had taken note of the fact that at the hearing the Home Office representative had not sought to refute or otherwise comment on the Licence Holder's assertion that immigration officers had not taken up the invitation to inspect these records.
- 5)** The Committee was satisfied, on the balance of probabilities, that in this particular case the Licence Holder had carried out the right to work checks required of him and that on the face of it there was no evidence to indicate that he had reason to believe that the Irish passport cards were not genuine. In short, the Committee did not consider the Licence Holder / the business to be culpable in this matter. It did not necessarily follow, however, that this finding of non-culpability on the part of the Licence Holder meant that the Premises Licence should not be revoked. The Committee's role when determining a Review was not to establish the guilt or innocence of any individual. The Committee was required to take steps with a view to the promotion of the licensing objectives (including the prevention of illegal working) in the interests of the wider community and not those of the individual licence holder. On balance, however, the Committee was of the view that *in this particular instance* revocation of the Premises Licence (or the taking of a lesser step) was not a proportionate step that was required to be taken in order to prevent further

illegal working taking place at the premises.

Failure to pay minimum wage / modern slavery

6) The Committee was not satisfied, on the balance of probabilities, that the evidence demonstrated a failure to pay the two workers in question the minimum wage or that modern slavery was taking place in relation to the two workers. The Licence Holder was adamant that the two workers had each been paid £70 per shift, rather than £70 per day, and that the wages were compliant with the national minimum wage requirement. There was no financial evidence (e.g. records of payments made by the business to the individuals in question) produced to contradict this assertion. The Committee also noted that there was no evidence produced to indicate that the two workers were not free to come and go. Indeed, the Committee noted that one of the photographs of record of transactions / payments shown on the individuals' mobile phones indicated a Pure Gym Ltd subscription.

Contravention of section 153 of the Licensing Act 2003

7) The Committee likewise viewed any contravention of section 153 of the 2003 Act as very serious and likely to result in revocation of the Premises licence. The Committee was not, however, satisfied, on the balance of probabilities, that there had been a contravention of section 153 of the 2003 Act in this particular case. The Licence Holder was adamant that the 17-year-old female trainee manager / waitress who was behind the bar at the time of the visit by immigration officers had not sold alcoholic drinks to the two customers sitting at the bar. The Licence Holder maintained that the drinks were soft drinks. There was no evidence to rebut this assertion. The Home Office readily accepted that it was not known whether the guests were drinking alcohol or not. They had sought to make the point in their evidence that if the guests had asked for an alcoholic drink then the 17-year-old employee was the only person who would be able to serve them. However, this assertion was conjecture and concerned with a future possibility. It was, in fact, perfectly legal for a 17-year-old female to be employed on the restaurant premises. Furthermore, it was legal for such employee to sell / supply alcohol to guests on the premises provided that the alcohol was either for consumption by persons with a table meal at a restaurant or the sale was specifically approved by a 'responsible person' (as defined within section 153(4) the 2003 Act).

Informative

The Committee was not in a position to offer a view on whether the use of forged Irish passport cards by illegal workers was prevalent within the UK and seen as an easier way to secure unlawful employment. However, the Committee was bound to advise the Licence Holder that a recurrence of illegal working at the premises would almost certainly result in revocation of the Premises Licence, irrespective of whether there was culpability or not on the part of the business. It followed, therefore, that the Licence Holder would be well advised to exercise caution in relation to the production of Irish passport cards as evidence of nationality / right to work and to seek advice from the Home Office if in any doubt.

The meeting closed at 11.58am

Chair