

**Minutes of the meeting of Licensing sub-committee held at  
Committee Room 1, The Shire Hall, St Peter's Square, Hereford,  
HR1 2HX on Monday 25 June 2018 at 10.00 am**

**Present:** Councillor DW Greenow (Chairman)  
Councillors: PGH Cutter and AJW Powers

**Officers:** Emma Bowell

**15. APOLOGIES FOR ABSENCE**

No apologies for absence were received.

**16. NAMED SUBSTITUTES (IF ANY)**

There were no substitutes present at the hearing.

**17. DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**18. REVIEW OF A PREMISE LICENCE IN RESPECT OF RUBY CHINESE TAKEAWAY,  
23 UNION STREET, HEREFORD. HR1 2BT- LICENSING ACT 2003**

Members of the licensing sub-committee of the council's planning and regulatory committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Prior to making their decision the members heard from Emma Bowell, Licensing Technical Officer and Sergeant Duncan Reynolds. The committee also heard from the premises licence holder, Sinh Quang Tran.

West Mercia Police outlined their representation in connection with the review which included:

- The premises were a well established business licensed for late night refreshment which had operated for a number of years in Union Street Hereford.
- The premises were also covered by the special cumulative impact policy which should also be taken into account when reviewing the licence.
- The police were involved in a Multi Agency Targeted Enforcement (MATE) group which was comprised of a number of agencies including the fire service, UK Border and Immigration Service, HMRC and various departments within Herefordshire Council. The purpose of the group was to ensure legal compliance and to target premises where there was intelligence to suggest that there was significant risk of harm to anyone who works or uses the premises.
- A MATE operation had taken place at the premises on 7 April 2018 which had been open for business. The intelligence received was that there were potentially

illegal immigrants employed at the premises. The purpose of the visit had been explained to Mr Tran.

- As part of the visit on 7 April, three males and one female had been detained as they were found to be in the country illegally with no right to stay or work in the UK.
- Mr Tran had been issued with a civil enforcement penalty as a result of the enforcement visit.
- At the time of detention, the female had £2,100 in her possession and could not explain why she had that amount of money. This issue is the subject of further investigation.
- It is the responsibility of the employer to ensure that all legal checks are completed to ensure that employees have the right to work or stay in the United Kingdom.
- Based on the numbers employed by Mr Tran, this was not an isolated incident and is a serious offence. By failing to undertake the appropriate checks for new employees, it showed a disregard to the law of the land. The view of West Mercia Police was that due to the seriousness of the matter that the licence be revoked.
- The S182 guidance indicates that consideration be given to revocation as the employment of illegal immigrants is considered to be a serious matter.

The committee then heard from Mr Tran who stated that he had been running the business for 24 years and had never done anything illegal during this period of time. He was truly and sincerely apologetic for this mistake. Mr Tran was ill at the moment and as a result could not cope with a lot of work and had found staff who were willing to help him. He also indicated that there were no other people living upstairs in the premises and that he would obey the law. He asked the committee for another chance as he had a young child and family to look after. If the licence was revoked, he would not be able to continue the business.

Following questions, it was confirmed:

- That UK Border Agency had used a language line in order to interpret during the enforcement visit.
- The staff had been introduced to Mr Tran by friends as people who would be able to work for him.
- There were no HR policies or employment checks in place as Mr Tran was unaware that he needed these. It was also the first time that he had employed staff.
- Most of his business was run at night and due to ill health, this had impacted on his ability to work.
- Mr Tran was from Vietnam and the four people detained were from various parts of China so there was no relationship between them.

The committee have carefully considered all the representations, reports and evidence before them today. They have had regard to their duties under S4 of the Licensing Act and considered guidance issued under s182 of the Licensing Act 2003 and Herefordshire's statement of licensing policy.

## **DECISION**

The sub committee's decision following a review of premises licence is as follows;

The premises licence shall be suspended for a period of two (2) months and the following condition shall be placed on the premises licence:

*“The premises licence holder shall permanently engage the services of an immigration advisor, as agreed in writing with the licensing authority, who shall undertake a review of all existing employees at the premises and to check entitlement to live and work in the UK and thereafter independently verify prospective employees’ right to live and work in the UK prior to the employee being engaged to work at the premises”.*

## **REASONS**

The committee had taken into account the statement from West Mercia Police as regards the events of 7 April 2018 and the reasons why they were seeking revocation of the premises licence. The premises licence holder had admitted to employing persons in contravention of immigration law and apologised for it. It was recognised that this was a serious crime and that the request for a review was justified.

They took into account the 24 years that the license had been held for and the fact this was the first time that the premises had been before the subcommittee. There was no evidence of a persistent failure to comply with licensing law and regulatory requirements.

Taking into account the statutory guidance at 11.28 the committee was aware that 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.

While the committee considered that the breach of immigration law is serious, they considered it did not warrant revocation on this occasion and a suspension of two (2) months with the above condition, would give the premises licence holder the opportunity to implement systems to ensure that any employee had the right to live and work in the UK. Given the likely financial impact of a revocation it was decided that the decision was appropriate and proportionate to ensure the promotion of the licensing objectives and prevent the undermining of the crime and disorder objective

### **19. REVIEW OF A PREMISE LICENCE IN RESPECT OF 'MUNCHIES, 59 COMMERCIAL ROAD, HEREFORD. HR1 2BD- LICENSING ACT 2003**

Members of the licensing sub-committee of the council’s planning and regulatory committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Prior to making their decision the members heard from Emma Bowell, Licensing Technical Officer and Sergeant Duncan Reynolds. The committee also heard from the premises licence holder agent’s, Rob Evans and the manager of the business and the designated premises licence supervisor.

West Mercia Police outlined their representation in connection with the review which included:

- The premises were a fast food takeaway operating in the city centre area of Hereford.
- The premises were also covered by the special cumulative impact policy which should also be taken into account when reviewing the licence.
- The police were involved in a Multi Agency Targeted Enforcement (MATE) group which was comprised of a number of agencies including the fire service, UK

Border and Immigration Service, HMRC and various departments within Herefordshire Council. The purpose of the group was to ensure legal compliance and to target premises where there was intelligence to suggest that there was significant risk of harm to anyone who works or uses the premises.

- A MATE operation had taken place at the premises on 28 April 2018 which had been open for business. The intelligence received was that there were potentially illegal immigrants employed at the premises.
- As part of the visit on 28 April, one male had been detained as they were found to be in the country illegally with no right to stay or work in the UK.
- At the time of the male was detained, a large amount of cash was seized and he was not able to account where it had come from.
- A civil enforcement penalty had been issued as a result of the enforcement visit.
- It is the responsibility of the employer to ensure that all legal checks are completed to ensure that employees have the right to work or stay in the United Kingdom.
- The view of West Mercia Police was that due to the seriousness of the matter that the licence be revoked.
- The S182 guidance indicates that consideration be given to revocation as the employment of illegal immigrants is considered to be a serious matter.

The committee then heard from Mr Rob Evans, the agent for the premises licence holder, who stated:

- That he had sent an email to the police at the end of the previous week offering conditions.
- That the box indicating that review had been undertaken by a responsible authority had not been ticked. It was noted that in the papers issued with the agenda, the relevant box had been marked.
- There was also a mistake in the name of the manager of the premises as it should be Rahroz Amin and not Hiwa Karim
- The manager of the business wished to apologise for the offence taking place. They had taken over the business in August 2017 and had made a substantive investment in the business.
- During the MATE visit the fire service had complimented them on the work they had undertaken.
- The conditions they had suggested were:
  - A suspension of the premises licence for one (1) month.
  - That comprehensive staff training is delivered to the staff which would not just address the illegal workers but addressing all aspects of the licensing objectives
  - A staff manual would be in place and available which would include a checklist which would need to be used to check the entitlement to work in the UK.
- Mr Said's father had died and that he was not present at the premises during the week prior to the enforcement visit. He had asked a friend if they knew anyone who would be able to help. The friend had identified someone for him and that he had not asked any questions because of the death of this father. No checks were undertaken as the person would only be employed by 10 days.
- Process were now being put in place which would ensure that checks did take place when employing new members of staff.
- The manager was aware of the financial implications of offering reduced hours.
- The manager did appreciate how serious an offence this was.

Following questions, it was confirmed:

- That the staff training manual which had been circulated as a supplement was draft and that premises licence holder would be happy to send the final version to licensing. There were no other HR policies in place.
- The option to close the business temporarily in view of the bereavement had not been considered but this would be taken into account if the situation were to occur again.
- The police were unaware of this bereavement.
- Five members of staff were employed by the business.
- The illegal worker had been employed between 22 April to 28 April which was less than one week.
- The premises licence holder had offered to reduce the hours on the licence as they wished to continue trading and were hoping to find a compromise. It was noted that the training would not take place during the evening.
- The training of staff would be conducted based on the availability of the staff.
- It was confirmed that the premises licence was on display in the premises as required by the Licensing Act 2003.

The committee have carefully considered all the representations, reports and evidence before them today. They have had regard to their duties under S4 of the Licensing Act and considered guidance issued under s182 of the Licensing Act 2003 and Herefordshire's statement of licensing policy.

## **DECISION**

The sub-committee's decision following a review of a premises licence is as follows:

The premises licence shall be suspended for a period of one (1) month and the following condition shall be placed on the premises licence.

*"The premises licence holder shall permanently engage the services of an immigration advisor, as agreed in writing with the licensing authority, who shall undertake a review of all existing employees at the premises and to check entitlement to live and work in the UK and thereafter independently verify prospective employees' right to live and work in the UK prior to the employee being engaged to work at the premises".*

## **REASONS**

The committee had taken into account the statement from West Mercia Police as regards the events of 28 April 2018 and the reasons why they were seeking revocation of the premises licence. The premises licence holder had admitted to employing a person in contravention of immigration law and apologised for it. It was recognised that this was a serious crime and that the request for a review was justified.

There was no evidence of a persistent failure to comply with licensing law and regulatory requirements.

Taking into account the statutory guidance at 11.28 the committee was aware that 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.

The committee noted that the company had instructed an agent and were already compiling checklists and training would be provided to all staff.

While the committee considered that breach of immigration law serious, they considered it did not warrant revocation on this occasion and a suspension of one (1) month with the above condition, would give the premises licence holder the opportunity to implement systems to ensure that any employee had the right to live and work in the UK. Given the likely financial impact of a revocation it was decided that the decision was appropriate and proportionate to ensure the promotion of the licensing objectives and prevent the undermining of the crime and disorder objective.

Although an offer was made to reduce in the licensable hours. The sub committee could not see how this would prevent a member of staff being employed without the appropriate checks being undertaken.