

LICENSING ACT 2003 HEARING ON 24 OCTOBER 2017 @ 1900HRS

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE

1. Premises:

Himalaya Momo House
28 Farnham Drive
Caversham
Reading
RG4 6NY

2. Applicants Requesting Review:

Reading Borough Council

3. Grounds for Review

Reading Borough Council (Licensing team) as a responsible authority under the Licensing Act 2003 and under the licensing objectives of prevention of crime and disorder, the prevention of public nuisance, the protection of children from harm and public safety make application for the review of the premises licence for Himalaya Momo House, 28 Farnham Drive, Caversham, Reading RG4 6NY

A combination of the issues outlined below and a whole host of licence condition breaches unearthed during inspections have led Reading Borough Council's Licensing team to taking this final serious step in reviewing the premises licence.

On 13th July 2017 - the premises were found employing 2 illegal workers. It is also suspected that further illegal workers absconded from the premises during the visit.

During the visit of 13th July 2017, the premises were found to be operating without a Designated Premises Supervisor (DPS). When questioned about this, it was stated that the named DPS had not been on site for over two years. There were also no other personal licence holders on site. Therefore, each sale of alcohol for the past two years has been illegal and unauthorised.

It was also stated that the named premises licence holder had left the premises ten days before this visit.

A further seven breaches of licensing legislation were also found.

Due to the seriousness of the crimes discovered at the premises and the undermining of the licensing objectives, the Licensing team respectfully submit that the premises licence should be immediately revoked.

4. Date of receipt of application: 31 August 2017

A copy of the review application received is attached at Appendix I

5. Date of closure of period for representations: 28 September 2017

6. Representations received:

During the consultation period, representations were received in regard to this review application from ;

Thames Valley Police which is attached at Appendix II.

The immigration service is attached at Appendix III.

A plan showing the location of the premises (in black) and surrounding streets is attached as Appendix IV.

7. Background

The premises is located within a small shopping parade in Caversham Park Village.

The Premises Licence Holder is stated as: Mr Sirop Chapel

The Designated Premises Supervisor is stated as: Mr Sirop Chapel

The premises currently has the benefit of a premises licence for the activities and hours detailed below: A copy of the current licence is attached at Appendix V

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>Licensable Activities authorised by the Licence</p> <p>Late Night Refreshment - Indoor & Outdoor Sale of Alcohol by Retail - On the Premises</p> | |
| <p>The times the licence authorises the carrying out of licensable activities</p> <p>Hours for the Provision of Late Night Refreshment</p> <p>Monday from 2300hrs until 0030hrs Tuesday from 2300hrs until 0030hrs Wednesday from 2300hrs until 0030hrs Thursday from 2300hrs until 0030hrs Friday from 2300hrs until 0030hrs Saturday from 2300hrs until 0030hrs Sunday from 2300hrs until 0000hrs</p> <p>Hours for the Sale by Retail of Alcohol</p> <p>Monday from 1000hrs until Midnight Tuesday from 1000hrs until Midnight Wednesday from 1000hrs until Midnight Thursday from 1000hrs until Midnight Friday from 1000hrs until Midnight Saturday from 1000hrs until Midnight Sunday from 1200hrs until 2330hrs</p> <p>Good Friday from 1200hrs until 2330hrs Christmas Day from 1200hrs until 2330hrs New Year's Eve from the end of permitted hours for that day to the start of permitted hours the following day.</p> | |
| <p>Hours the Premises is Open to the Public</p> <p>N/A</p> | |
| <p>8. Licensing Objectives and Reading Borough Council's Licensing Policy Statement</p> | |
| <p>In determining this application the Licensing Authority has a duty to carry out its functions with a view to promoting the four licensing objectives, which are as follows:-</p> <ul style="list-style-type: none"> • the prevention of crime and disorder; • public safety • the prevention of public nuisance • the protection of children from harm <p>In determining this application the Licensing Authority must also have regard to the representations received, the Licensing Authority's statement of licensing policy and any relevant section of the statutory guidance to licensing authorities.</p> | |

9. Power of Licensing Authority on the determination of a Review

In determining the application the sub-committee can take such of the steps as it considers appropriate for the promotion of the licensing objectives, which are:

1. take no further action
2. to issue formal warnings to the premises supervisor and/or premises licence holder
3. modify the conditions of the licence (including, but not limited to hours of operation of licensable activities)
4. exclude a licensable activity from the scope of the licence
5. remove the designated premises licence supervisor
6. suspend the licence for a period not exceeding three months
7. revoke the licence.

Where the sub-committee takes a step mentioned in 3 or 4 it may provide that the modification or exclusion is to have effect for a period not exceeding three months or permanently.

Amended Guidance issued under section 182 of the Licensing Act 2003 **April 2017**

Licensing Objectives and Aims:

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;

Representations from the police

9.12 In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Licensing authorities acting as responsible authorities

9.13 Licensing authorities are included in the list of responsible authorities. A

similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

Home Office Immigration Enforcement acting as a responsible authority

9.25 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

9.31 Regulations governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

Determining actions that are appropriate for the promotion of the licensing objectives

9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Designated Premises Supervisor

10.26 The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or the personal licence has been suspended.

10.27 The main purpose of the 'designated premises supervisor' as defined in the 2003 Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder. The requirements set out in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (see Chapter 4 of this Guidance).

10.28 The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.

The Review process

11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

Powers of a licensing authority on the determination of a review

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring

improvement - either orally or in writing - that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them. 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for employing a person who is disqualified from that work by reason of their immigration status in the UK;

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, 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.

In determining the application the sub-committee can take such of the steps as it considers appropriate for the promotion of the licensing objectives, which are:

1. take no further action
2. to issue formal warnings to the premises supervisor and/or premises licence holder
3. modify the conditions of the licence (including, but not limited to hours of operation of licensable activities)
4. exclude a licensable activity from the scope of the licence
5. remove the designated premises licence supervisor
6. suspend the licence for a period not exceeding three months
7. revoke the licence.

Where the sub-committee takes a step mentioned in 3 or 4 it may provide that the modification or exclusion is to have effect for a period not exceeding three months or permanently.

Amended Guidance issued under section 182 of the Licensing Act 2003 April 2017

Licensing Objectives and Aims:

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

They include:

protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;

Requirements for a personal licence

4.2 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment. This is why sales of alcohol may not be made under a premises licence unless there is a DPS in respect of the premises (who must hold a personal licence); and every sale must be made or authorised by a personal licence holder. The exception is only for those community premises which have successfully applied to remove the DPS requirement .

4.31 Every premises licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to remove the usual mandatory conditions set out in the 2003 Act. Guidance on such applications is set out in paragraphs 4.52 to 4.65 of this Guidance.

4.32 The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly. For this reason, the name of the DPS and contact details must be specified on the premises licence and this must be held at the premises and displayed in summary form. The DPS' personal address should not be included in the summary form in order to protect their privacy.

Representations from the police

9.12 In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Licensing authorities acting as responsible authorities

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

Home Office Immigration Enforcement acting as a responsible authority

9.25 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

9.31 Regulations governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

Determining actions that are appropriate for the promotion of the licensing objectives

9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

The Review process

11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the

premises in connection with any of the four licensing objectives.

Powers of a licensing authority on the determination of a review

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement - either orally or in writing - that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to

recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for employing a person who is disqualified from that work by reason of their immigration status in the UK;

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, 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.

Reading Borough Council Licensing Policy Statement

1.5 The Council believes that good management of its vibrant entertainment, alcohol and late night refreshment industries, and of the street environment within which they operate, is essential to the continued success of Reading Town Centre and to attracting the wide range of people who want to come here to work, to visit and to live. However, the predominantly urban nature of the town and the significantly large proportion of young residents means that issues such as:

- (a) striking an appropriate balance between the needs of residents and the needs of businesses,
- (b) the control of underage drinking, and
- (c) the management of young and potentially immature drinkers,

are matters which are particularly relevant to the exercise of the Authority's licensing functions, and ones which applicants and existing licensees also need to consider.

7.15 Crime & Disorder Act 1998

7.15.1 In applying this policy, the Authority will have regard to its obligations under Section 17 of the Crime and Disorder Act 1998 and will do all that it reasonably can to prevent crime and disorder in Reading. The Authority will also have regard to the Safer Reading Partnership, which incorporates both local and national strategies and whose mission statement is "We will continue to make Reading a safer place for those who live, work and visit, through a reduction in crime and disorder". In addition the Authority will liaise with the Reading Crime Reduction Partnership in order to reduce crime, misuse of drugs and the fear of crime.

7.15.3 Policing and Crime Act 2009

In applying this policy, the Authority will have regard to their obligations under Part 3 relating to alcohol misuse, (children) changes to the mandatory condition, and the licensing authority as an interested party.

10.5 Review of Premises Licence

10.5.1 Any premises subject to a premises licence or club premises certificate may have that licence or certificate reviewed by the Licensing Authority on application by a responsible authority or interested parties. The Act provides strict guidelines as to the timescale and procedures to be adhered to and the Authority will deal with every review application on that basis.

10.7 Designated Premises Supervisor (DPS)

10.7.1 This is the person who for the time being is specified in the premises licence as being the premises supervisor. That person must hold a personal licence.

10.7.2 Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. The main purpose of the 'designated premises supervisor' as defined in the Act, is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force.

Reading Borough Council, Civic Offices, Bridge Street, Reading, RG1 2LU

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I Richard French on behalf of the Licensing Authority of Reading Borough Council

(Insert name of applicant)

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Postal address of premises or, if none, ordnance survey map reference or description Himalaya Momo House 28 Farnham Drive Caversham | |
| Post town Reading | Post code (if known) RG4 6NY |

| |
|-------------------------------------------------------------------------------------------------------------|
| Name of premises licence holder or club holding club premises certificate (if known) Sirop Chapel |
|-------------------------------------------------------------------------------------------------------------|

| |
|----------------------------------------------------------------------------------------|
| Number of premises licence or club premises certificate (if known) LP2002112 |
|----------------------------------------------------------------------------------------|

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

| |
|-----------------------------------------------------------------------------------------------------------------------|
| Name and address Licensing Team Reading Borough Council Civic Offices Bridge Street Reading RG1 2LU |
| Telephone number (if any) 01189 37 37 62 |
| E-mail address (optional) licensing@reading.gov.uk |

This application to review relates to the following licensing objective(s)

- Please tick one or more boxes ✓
- | | |
|-----------------------------------------|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 2)

On 13th July 2017 – the premises were found employing 2 illegal workers.
It is also suspected that further illegal workers absconded from the premises during the visit.

Section 11.27 and 11.28 of the Secretary of State’s Guidance pursuant to the Licensing Act 2003 states:

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for employing a person who is disqualified from that work by reason of their immigration status in the UK

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, 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.**

During the visit of 13th July 2017, the premises were found to be operating without a Designated Premises Supervisor. When questioned about this, it was stated that the named DPS had not been on site for over two years. There were also no other personal licence holders on site. Therefore, each sale of alcohol for the past two years has been illegal and unauthorised.

It was also stated that the named premises licence holder had left the premises ten days before the visit.

A further seven breaches of licensing legislation were also found.

Due to the seriousness of the crimes discovered at the premises and the undermining of the licensing objectives, the licensing team respectfully submit that the premises licence should be immediately revoked.

Please provide as much information as possible to support the application (please read guidance note 3)

The premises known as Himalaya Momo House currently have a premises licence pursuant to the Licensing Act 2003 which permits the provision of late night refreshment until 0030hrs from Monday to Saturday and the sale of alcohol on the premises until midnight from Monday to Saturday. Sunday hours cease half an hour before the hours stated above.

The premises is a restaurant/takeaway and the premises licence holder and designated premises supervisor is stated as Sirop Chapel.

The premises were visited on 13th July 2017 in a joint operation between the Licensing team, Thames Valley Police and officers from the Home Office Immigration Enforcement team. Immigration Enforcement have been a 'Responsible Authority' under the Licensing Act since April 2017 to predominantly deal with the prevention and detection of immigration offences that may be being committed on licensed premises which therefore undermine the prevention of crime and disorder licensing objective.

On attendance at the premises two illegal workers were found working and the details are as follows:

1. Nepalese male, aged 28 years old, who was encountered working illegally in the kitchen and was escorted off the premises and detained. This person had already tried to flee the premises and had to be detained by the police.
2. Bhutanese male, aged 54 years old, who was encountered working illegally in the kitchen and was escorted off the premises.

It is the job of any responsible employer to ensure that the correct right to work checks are carried out. The manager of the premises admitted that he had conducted no checks on the vast majority of his employees.

The Immigration Act 2016 amended Section 21 of the Immigration, Asylum and Nationality Act 2006 and is the relevant legislation that deals with the employment of illegal workers. It states:

- 1) A person commits an offence if he employs another ("the employee") knowing that the employee is [disqualified from employment by reason of the employee's immigration status].*
- (1A) A person commits an offence if the person—*
- (a) employs another person ("the employee") who is disqualified from employment by reason of the employee's immigration status, and*
- (b) has reasonable cause to believe that the employee is disqualified from employment by reason of the employee's immigration status.*
- (1B) For the purposes of subsections (1) and (1A) a person is disqualified from employment by reason of the person's immigration status if the person is an adult subject to immigration control and—*
- (a) the person has not been granted leave to enter or remain in the United Kingdom, or*
- (b) the person's leave to enter or remain in the United Kingdom—*
- (i) is invalid,*
- (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation,*

passage of time or otherwise), or

(iii) is subject to a condition preventing the person from accepting the employment.]

(2) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment—

(i) to imprisonment for a term not exceeding [five] years,

(ii) to a fine, or

(iii) to both

The offence of employing illegal workers is now also a relevant offence in the Licensing Act 2003. As stated previously in this application, the Licensing Act 2003 Guidance at 11.27 and 11.28 now states that the employment of illegal workers is to be regarded as a crime that should be taken particularly seriously and that revocation of the premises licence – even in the first instance – should be seriously considered. The licence holder is undermining the crime and disorder licensing objective as well as failing to ensure that the people he employs are legally in the country or entitled to work.

There are potentially numerous other criminal offences which may apply to the employment of illegal workers and these are summarised as follows:

1. The exploitation of illegal workers by unscrupulous employers means that the only person who benefits from their employment is the licence holder through financial gain.

2. Illegal workers – being in the country illegally or working illegally – are unable to declare themselves to the authorities and seek public assistance should they require it.

3. Illegal workers are often paid ‘off the record’ by the employer meaning that the correct tax and national insurance deductions are not taken into account or declared to HMRC. This would be contrary to the Fraud Act 2006.

4. People who are living in the UK or who are working illegally are often not paid anything close to the Minimum wage which is illegal and again only benefits the employer financially.

5. Illegal workers – because of being deliberately underpaid by unscrupulous employers – are often only provided with the most basic accommodation and standard of living which is often linked to their continued employment at a licensed premises.

6. Illegal entrants into the country will not have been subject to the usual immigration checks and health screenings. This could seriously impact on public protection and the health and wellbeing of the general public as a whole. This could be particularly pertinent if the illegal entrant has arrived from a country with health issues and the employer has then decided to employ that person in a kitchen or other function where food is served to the public.

7. The employment of illegal workers is often done at the expense of people who are living and working in the country legally and is only done to financially benefit the licence holder and to

undercut legitimate, law abiding competitors.

8. Illegal entrants – who have not undergone appropriate checks or immigration clearance at the border – could be being unwittingly employed by the licence holder despite them having current or previous criminal convictions which may endanger the public.

The employer or licence holder is exploiting potentially vulnerable people and engaging in a multitude of criminal offences by employing them at this licensed premises.

Licensing Breaches:

During the visit of 13th July 2017, the Licensing team conducted a licensing inspection and found the following issues:

1. By their own admission, there had been no designated premises supervisor on site for over two years. There were also no other personal licence holders on site. Therefore each alcohol sale over a two year period was unlicensed, unauthorised and illegal. Each unlicensed sale of alcohol over that two year period is a single offence.
2. By their own admission, the premises licence holder had left the business ten days before the visit. Therefore there was no licence holder and no dps on site.
3. Given that there was no DPS or personal licence holder, no person would have been legally authorised to sell alcohol from the premises which is contrary to the mandatory conditions. In any case, no authorisation list was found.
4. Part A of the premises licence could not be located. This is an offence under Section 57 of the Licensing Act 2003.
5. Part B of the premises licence was not on display. This is an offence under Section 57 of the Licensing Act 2003.
6. A Section 57 notice could not be located. This document tells the enforcing authorities where Part A of the licence is kept and who has custody of it. This is an offence under Section 57 of the Licensing Act 2003.
7. None of the staff or management knew what the licensing objectives were. Clearly this underlines a lack of knowledge; lack of training and begs the question of how the licensing objectives could be actively promoted if nobody knows what they are.
8. No staff training records could be produced for any staff member. This is concerning both in terms of responsible alcohol retailing and food handling.
9. It was stated that persons under the age of 25 were asked to provide identification if they tried to purchase alcohol but no documented evidence could be produced to demonstrate this or how this was done.
10. The plan – which forms part of the licence – could not be produced to officers upon request.

A copy of the letter sent to the licence holder in respect of these licensing breaches can be found at **appendix RF-1**.

It is inconceivable that any responsible licence holder should act in this manner and undermine the promotion of the licensing objectives to this extent. The licensing objectives are there to prevent crime and disorder; protect children from harm and ensure that the public are safe when they attend the premises. They should not be treated, as appears to be the case here, as an optional extra.

There is a distinct lack of training throughout the business meaning the risk to the public is extremely high. This is systematic of the poor management and corner cutting identified in the offences outlined in this review application.

In summary, the offences outlined in this review application are some of the most serious outlined in the Licensing Act 2003. The employment of two illegal workers and their possible exploitation for financial gain is clearly an extremely serious criminal offence and one that the Licensing Act has identified as one where the revocation of the licence should – even in the first instance – be seriously considered. There are no acceptable excuses or justification that can be offered for this. A licence holder and responsible employer should, as a bare minimum, be checking that their potential employees are eligible to reside and work in the UK. By the manager's own admission, he had failed to do this. The licence holder has shown a complete disregard for all manner of laws and has committed extremely serious criminal offences from the premises where he operates. This also applies to the licensing issues encountered at the premises which pose a substantial risk to public safety and seriously undermine the promotion of the licensing objectives – particularly the unlicensed retail of alcohol for over two years.

Allowing this premises to continue to operate with the benefit of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of the licensing authority, Thames Valley Police and colleagues in Immigration Enforcement.

It is the licensing team's respectful submission that the only appropriate and proportionate step to promote the licensing objectives and safeguard the public as a whole, is for the licence to be immediately revoked.

List of appendices:

Appendix RF-1 – Licensing inspection letter of 13th July 2017

Appendix RF-2 – Food Safety inspection sheet from June 2017

Appendix RF-3 – Case law – East Lindsey District Council v Abu Hanif

Please provide as much information as possible to support the application (please read guidance note 3)

N/A

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

| Day | | Month | | Year | | | |
|-----|---|-------|---|------|---|---|---|
| ┆ | ┆ | ┆ | ┆ | ┆ | ┆ | ┆ | ┆ |

If you have made representations before relating to the premises please state what they were and when you made them

N/A

Please tick ✓

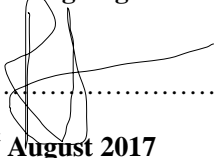
yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature 

Date **31st August 2017**

Capacity **Licensing Enforcement Officer**

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Licensing Team Reading Borough Council Civic Offices Bridge Street | |
| Post town Reading | Post Code RG1 2LU |
| Telephone number (if any) 01189 37 37 62 | |
| If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) licensing@reading.gov.uk | |

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Alison Bell
Director of Environment and
Neighbourhood Services
Civic Offices, Bridge St, Reading, RG1 2LU
☎ 0118 937 3787

Our Ref:EVU 053042

e-mail: richard.french@reading.gov.uk

13 July 2017

Mr Sirop Chapel & Mr Bir Chhantyal
Himalaya Momo House
28 Farnham Drive
Caversham
Reading
RG4 6NY

Your contact is:

Mr Richard French, Licensing

Dear Sirs

Licensing Act 2003

Premises Licence Number: LP3000464 (at the time of writing)

Premises: Himalaya Momo House

Premises Address: 28 Farnham Drive, Caversham, Reading, RG4 6NY

On Thursday 13th July 2017 I visited your premises with officers from Immigration Enforcement and Thames Valley Police to ensure you are complying with the above premises licence and advise on any matters that may arise during the inspection. Immigration Enforcement officers arrested an employee who was suspected of being in and working in the country illegally. A second worker was escorted from the premises as he had no right to work in the UK. Other employees also ran out of the premises whilst we were talking to you in the kitchen. Immigration Enforcement will correspond with you about this matter separately. This letter will deal with the licensing inspection that was carried out at the premises. The licensing inspection was carried out with Mr Bir Chhantyal.

During my inspection, I found a number of items that require your attention as outlined below:

1) When questioned, you stated that the named premises licence holder had left the business ten days ago. You also stated that the named DPS had left the business two years ago. Therefore there was no licence holder or DPS in control of the premises. It was confirmed that no other person on the premises held a personal licence therefore all alcohol sales undertaken since the stated DPS left have been illegal and unauthorised. The mandatory conditions on page 3 of the licence state that all alcohol sales must be made or authorised by a personal licence holder. The DPS is also the person who is supposed to be in day to day control of the premises. It is extremely concerning to encounter this at a licensed premises. Not only is it illegal, it severely undermines the promotion of the licensing objectives. You were advised during our visit that no further alcohol could be sold on that evening and until there is a DPS in place at the premises.

2) It is acknowledged that you attended the Civic Offices on 14th July to appoint a new DPS and to discuss the previous night's inspection. Some concern remains that the new DPS is the same person who is stated as the licence holder - particularly as you said that he had left the business ten days previously. It was outlined to you both what the role of the DPS was in relation to training and authorised staff in the responsible sale of alcohol. You stated that you will soon have your own personal licence and are planning to transfer the premises licence into your name. You are therefore reminded to ensure this is done correctly and in a timely manner.

3) Part A of your premises licence could not be produced. This is an offence under the Licensing Act. Part A of the licence should be kept in a secure location and produced to officers of the Council or police upon request.

4) Part B of your premises licence was not displayed. This is an offence under the Licensing Act. Part B of your licence should be displayed in a prominent position so that members of the public can read it.

5) A Section 57 notice could not be located on the premises. This notice is required and simply states where Part A of the premises licence is and who has custody of it in the absence of the DPS. It is advisable to put this notice next to Part B of your premises licence. Please ensure this notice is completed.

6) There was no authorisation list detailing who had been authorised to sell alcohol. There could not have been any verbal authorisation either due to the fact that there were no Personal Licence holders working at the premises. Please ensure that all members of staff who sell alcohol have been trained and authorised to sell alcohol. This list should be placed next to Part B of your licence and the Section 57 notice and should be updated when new staff are trained and authorised.

7) You were not able to tell me what the four licensing objectives were. These are fundamental to the Licensing Act as they should be actively promoted by responsible licence holders. It is unclear how the licensing objectives could be promoted at this premises if nobody knows what they are. It is recommended therefore that these are refreshed and included in any staff training.

8) No staff training records could be produced for any staff members. There is a particular concern that no training had been given in relation to the responsible retail of alcohol. You are advised to undertake written licensing training with all staff and provide refresher training when required. As outlined to you, such training would include information on your age verification policy (Challenge 25), acceptable forms of ID, the licensing objectives and how to deal with and record refusals. The training on refusals would also include reminders about how you do not sell alcohol with online orders. All staff should then sign their training record. It is also recommended that you keep a refusal log on the premises and that all staff know how to use it.

9) You stated that you ID any person who looks under the age of 25. You are advised to put some Challenge 25 posters up behind the bar servery to advertise this fact. If you search for 'Challenge 25 posters' on a search engine then you will be able to print them off.

Please rectify all of the above within 28 days and notify me when you believe everything is correct.

You are further reminded that you should be checking all passports and visas of all of your current staff and any potential new members of staff to ensure that they all have the right to reside and work in the UK. As stated above, Immigration Enforcement will correspond with you about the two illegal workers found at the premises during our visit.

Should you wish to discuss the licensing issues raised in this letter then please contact me.

Yours faithfully

Mr Richard French
Licensing Enforcement Officer

c/c Immigration Enforcement
c/c PC Wheeler of Thames Valley Police

5-10-30pm 7 days 01189484818
 Prep 300pm



Food Hygiene Inspection Aid-Mémoire

Name: HIMALAYA Tando House Inspector: MWT Inspection Date: 28/6/17

Address: 28 FARNHAM DRIVE CANNERSHAW RG4 6NY Announced inspection? Y/N

FLARE DATABASE CODES INU Type: R-full/partial inspection; S-other official control (OOC) incl sampling, etc of Broadly Compliant (BC); X-Non Official Control insp (education/intel) BC cat D/E alternate with OOC; J-ceased trading(food closed but business still exists).

ACTION DIARY TEMPLATE FH1 F50 -FH Written Warning (letter or IRF with legal requirements), F51 -Improvement Notice(s), F53 -Voluntary closure, F52 -HEPN, F54 -seizure of food, F35 - Revisit, Code -food reg sent/left/checked, G48 -2nd person, GTW- Trade waste not ok, FR3 (insert rating no.) Admin to send rating stickers, F64 -Copy of IRF to Head Office PRU, More tab, Equipment FBK -Blast chiller, FBA -Blast freezer, FAQ -Vac Pack Machine, FBQ -Duck oven, FBP -Tandoori oven, FAJ -Band saw

| Item | Detail | Description | Scheduled Date | Actual Date | Officer | Time |
|------|--------|-------------|----------------|-------------|---------|------|
| 1 | FBP | GAS | 15-6-17 | 28-6-17 | MWT | 25 |
| 2 | R | ROUTINE | | | | |
| 3 | F50 | IRF | | | | |
| 4 | FR3 | IEEP | | | | |

Food Hygiene Risk Rating

Inspection Summary

| SCORE | Criteria |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TYPE OF FOOD & METHOD OF HANDLING | |
| 5/A | Handling Low risk Foods |
| 10/B | Handling High Risk Foods |
| <u>30/C</u> | Prep High Risk Foods cook/handle |
| 40/D | Manufacture high Risk foods |
| METHOD OF PROCESSING | |
| <u>0/A</u> | None |
| 20/B | High risk activities; cook/chill foods; Air drying ie. biltong; low acid foods; add salt or preservatives; sushi, rare burgers; vacuum & sous vide packing |
| CONSUMERS AT RISK | |
| 0/A | Very Few |
| <u>5/B</u> | Few |
| 10/C | Intermediate |
| 15/D | Substantial national /internat distrib |
| VULNERABLE GROUPS (catering) | |
| <u>0/A</u> | Premises serving >20 people in a vulnerable group |
| OR | |
| 22/B | |
| FOOD HYGIENE & SAFETY (see COP) | |
| 0/A | Reason: |
| 5/B | Labels need to ensure |
| <u>10/C</u> | stock rotation + Staff |
| 15/D | training |
| 20/E | Label areas of prep |
| 25/F | Probe burn, not working |
| STRUCTURAL (see COP) | |
| 0/A | Reason: |
| 5/B | non-absorbent surfaces |
| <u>10/C</u> | need a raw area |
| 15/D | cleaning equip to be |
| 20/E | to be replaced |
| 25/F | |
| CONFIDENCE IN MANAGEMENT (see COP) | |
| 0/A | Reason: |
| <u>5/B</u> | - In-house training |
| 10/C | re FSTIS Regd |
| 20/D | - Ensure signed off diary |
| 30/E | |
| <u>0/A</u> | Significance of Risk of food being contaminated. |
| OR | |
| 20/B | |
| TOTAL | 60 C A B A C C B A |

File Comments from last visit incl any complaints to follow up since last insp:

FH S CIM
 C C C

Risk Rating of Premises of past 4 FHI? C

Owners name on existing food reg: BIR CHHANTAL

PAP for FH? Y/N PAP name? CHHANTAL

Health and safety due? Yes/No Food standards due? Yes/No

Range of foods: LANB CHICKEN FISH DUCK

Method of processing?

Preferred language(s): ENGLISH

Number of customers/meals: min max 50

Premises used by other bodies? Y/N Who? :

Any off site activities? Y/N Details:

Business to business sales? Y/N Who?

Approval needed? Y/N

Reason for Chosen intervention - other than full inspection. If this is an S/X type inspection. Highlight which areas audited i.e. food hygiene, structural, CIM or audit

ROUTINE

Activities in progress at time of visit (incl any specific discussion points with named staff, include job function)

PREP FOR EVENING.

Proposed business changes (Circle) menu changes/ building work/refurb, starting delivery, new contractor, closure/ownership change, other new service? Other

Suggested areas for focus at next S type inspection:

Training Labels - stock rotation

Reasons if changed from category A (manager needs to sign bottom of page)

| | Y | Timescale |
|-----------------------------------------------------------------------|-----|-----------|
| Sampling to be undertaken during next visit: | | |
| Discussion with Home Authority/PAP | | |
| Change in FHRS rating (if zero/one rating has revisit been scheduled) | | |
| Variance to food enforcement policy | Y N | Reason: |

| FH Risk Rating | Rating FR | FHRS score | But no score greater than |
|-----------------|-----------|--------------|---------------------------|
| A: 92-196 | 5 | 0-15 | 5 |
| B: 72-91 | 4 | 20 | 10 |
| <u>C: 52-71</u> | <u>3</u> | <u>25-30</u> | <u>10</u> |
| D: 31-51 | 2 | 35-40 | 15 |
| E: 0-30 | 1 | 45-50 | 20 |
| | 0 | > 50 | 30 |

Qualitative Review : Name & Signed: Position: Date:

Comments:

Part 1: Suppliers:

1.1 Names of main food suppliers and type of food supplied: (Meat, Fish, bi-valve molluscs, dairy, eggs, imported foods)

AI LUTOC (Frozen Goods) Meat, chicken
 Lamb, duck
 Makro Reg.
 Thomas CFC Reg

1.2 Any foods purchased direct from companies outside the UK? e.g. Internet Y N

Part 2: Training

2.1 Details of Training/Instruction/Supervision Arrangements

Officer to describe training/instruction & supervision (incl new staff training)

2.2 Food Handler Training

| Categories | Staff Name | Cat A, B, C | Training Type Specify if Online (O), accredited (A) or in-house (H) | Date done | Cert Y/N |
|---------------------------------------------|---------------------|-------------|---------------------------------------------------------------------|-----------|----------|
| A=Handle LRFs & wrapped food | a. Hemanta Pon | A | L2 | 17.6.16 | Y |
| B=Handle open HRFs | b. Bip Chhantyal | A | L2 | 17.11.16 | Y |
| C=Food handlers who have a supervisory role | c. Pritam Budathoke | A | L2 | 17.11.16 | Y |
| | d. | | | | |
| | e. | | | | |

2.3 Discussion with staff and observed operational practices suggest suitable training? Y N

Comments on staff practices: no C. case about HACCP / SFBB discussed

Consideration of knowledge of hand washing, cross contamination, e.coli source & control

Part 3: Food Safety Management System (FSMS)

✓ = Satisfactory, ⊗ = Unsatisfactory [⊗ must result in a comment on IRF], N/A = Not applicable

3.1 Details of HACCP system in place

SFBB
 - Bespoke/Codex type
 - Records only
 - Suitable? (Consider EC Guidance on Flexibility)

CCP= Critical control point; CL=Critical Limits; CA=corrective action; MP = monitoring Procedures

| List business CCPs: (officer's opinion) (Cross off if n/a, add CCPs as needed). | 3.2 business identified all necessary CCPs? | 3.3 CL identified? | 3.4 CL valid? | 3.5 MPs for CCPs established? | 3.6 CA for each CCP? | 3.7 CCP controlled satisfactorily? |
|---------------------------------------------------------------------------------|---------------------------------------------|--------------------|---------------|-------------------------------|----------------------|------------------------------------|
| Purchase/Delivery | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Storage (chill/frozen) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Preparation | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cooking / Reheating | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cooling | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Hot Holding | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cold Service | | | | | | |
| Delivery Transport | | | | | | |

| | | | |
|-----------------------------------------|----|--------------------------------------------------|------------------------|
| 3.8 Defrosting procedures safe? | ✓ | Verification | Yes records up to date |
| 3.9 Doc procedures for e. coli control? | NO | 3.13 Are records up to date and accurate? | ✓ |
| Validation | | 3.14 Manager sign off of records? | X |
| 3.10 Suitable person did analysis? | ✓ | 3.15 Staff trained? (incl new staff)? | Advice given ✓ |
| 3.11 All CCPs and CLs identified? | ✓ | 3.16 Periodic review? (& when menu/equip change) | ✓ |
| 3.12 MPs and CAs are suitable? | ✓ | 3.17 Inhouse/third party audit? | ✓ |

3.18 General Comments on FSMS

3.19 Overall HACCP Compliant (Article 5): Y N Proposed Action if N:

Hygiene Prerequisite programme (PRP)

√ = Satisfactory, ⊗ = Unsatisfactory [⊗ must result in a comment on IRF], N/A = Not applicable

Part 4: Structural

| General | | S/S areas not labelled | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------|----------|
| 4.1 Construction & size of business permit GHP? | ✓ | | |
| 4.2 Layout of premises permits GHP? | ✓ | S/S | |
| 4.3 Drainage satisfactory? | ✓ | | |
| 4.4 Lighting suitable? | ✓ | | |
| 4.5 Ventilation satisfactory? | ✓ | | |
| 4.6 Suitable sanitary accommodation? Ventilated lobby? WHB? | | | |
| 4.7 Provision of suitable changing facilities? | ✓ | | |
| Food Room Requirements | | | |
| 4.8 Adequate number of wash hand basins with hot & cold water, soap & hand drying facilities? | ✓ | | |
| 4.9 Adequate facilities for; Cleaning utensils/equip? (H+C water & dishwasher (full cycle not interrupted) or equivalent? Washing food? (if dual use, system for cleaning?) | ✓ | Dispenser # | |
| 4.10 Ceilings & overhead fixtures prevent accumulation of dirt, formation of mould/condensation & shedding of particles? | ✓ | 2 sinks or 1 + | |
| 4.11 Are the following in sound condition & easy to clean/disinfect? | | | |
| Floors | ✓ | | |
| Walls | ✓ | Paint Reg. clean | |
| Doors | ✓ | | |
| Food contact surfaces | ✓ | S/S | |
| 4.12 Windows constructed to prevent accumulation of dirt? | | | N/A |
| 4.13 Equipment in good repair/condition? | | | ✓ |
| 4.14 Food containers in good repair/condition? Cleaned & disinfected if reused? | | | ✓ |
| 4.15 Food packaging stored in clean area? | | | |
| Pest Prevention & Control | | | |
| 4.16 Structure ok? No proofing required. | | | ✓ |
| 4.17 No signs of infestation? | | | ✓ |
| 4.18 Pest control contractor? Name: Frequency: Type: Rodents/ Cockroaches/ Flies/ All | | Pestok 2/12 | ✓ |
| 4.19 Log book/Diary examined? Last visit date: | | 15-5-17 | ✓ |
| 4.20 Any actions from checks addressed? | | | N/A |
| 4.21 Or is in house system suitable? Frequency of checks? Recorded? | | change door | ✓ |
| Vehicles | | | |
| 4.22 Vehicle seen, clean, good repair and condition? Note registration of vehicle: | | | not seen |
| 4.23 Adequate temp controlled storage space? | | | |
| 4.24 Designated areas for raw and RTE | | | |

Part 5: Operational

| Cleaning | | 5.13 Contaminated e.g. raw meat cardboard used/disposed of appropriately? | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------|---|
| 5.1 Premises clean? | ⊗ | | ✓ |
| 5.2 Equipment installed to allow cleaning? | ✓ | 5.14 No evidence of breakages, unnecessary glass, bolts missing, paper clips, or other physical contaminants etc... in food prep areas? | ✓ |
| 5.3 Food contact surfaces & equipment clean? (Remember ice machine & soda gun) | ✓ | 5.15 Staff aware of food allergens and appropriate controls? Labels | ✓ |
| 5.4 All hand contact surfaces clean & disinfect? | ✓ | Stock Control | |
| 5.5 Suitable chemicals and materials for cleaning? List: Anti-bac one minute Degreaser. Contact. | ✓ | 5.16 Products date labelled where necessary? | ⊗ |
| 5.6 Disinfectant/Sanitiser meet BS EN 1276:1997 or BS EN 13697:2001? | ✓ | 5.17 Manufacturers & in house dates all ok? | ✓ |
| 5.7 Cleaning chemicals properly stored? | ✓ | Personal Hygiene | |
| 5.8 Cleaning schedule in place & implemented? | | 5.18 Good standards of personal hygiene observed? | ✓ |
| 5.9 Two stage cleaning? Visibly clean then disinfect, consider contact time, correct dilution | ✓ | 5.19 Appropriate hand washing practices observed? | |
| 5.10 Suitable cloth management? Single use - Sep colour coded cleaning cloths, sponges, mops? - Are reusable cloths machine washed? advice given | | - Recognised technique e.g. DoH | ✓ |
| Food Contamination | | - Taps turned off with towel (or no touch taps)? | |
| 5.11 All foods covered? | ✓ | - Sanitizing gel only after proper HW | |
| 5.12 Appropriate controls to prevent cross-contamination e.g. | ✓ | 5.20 Aware of appropriate glove use? | |
| - Different equip? (unless disinfected in dishwasher) | | 5.21 Staff fit to work & know 48 hr rule? | ✓ |
| - No dual use complex equip unless full dismantle | | 5.22 Change soiled clothing after handling raw food? | ✓ |
| - Dual use of easy clean equipment - cleaned safely? | | 5.23 Fitness to work procedure in place? | ✓ |
| - No raw food contamination of cash registers? | | 5.24 Over-clothing suitable and clean? | ✓ |
| - Raw meat is not washed during preparation? | | 5.25 Adequate first-aid provisions? | ✓ |
| - Use bowl/chopping board as food contact surface | | Complaints/Incidents | |
| - Separate storage areas? (clearly identifiable) | | 5.26 Procedures/recent complaints all ok? | |
| - Zoned areas? (clean area sufficiently separated) | | 5.27 How are customer complaints handled? | |
| - Time zoning? (are cleaning, sanitising and doc ok?) | | Comments on cross contamination if required: | |
| - Separate staff for tasks? | | | |

Tandoor over reg chain to prevent pipe being damaged

| | | | |
|--------------------------------------------------------------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Waste Disposal | | 5.32 Copy of Waste Transfer Licence seen? | N/A |
| 5.28 Food waste Contractor used and details: <i>RBC</i> | ✓ | 5.33 Animal by-products? (RETAIL ONLY) - Separation of raw meat/fish & eggs - Disposal via approved contractor - Detailed records kept (what collected, weight, destination, transport, date - NB - Kept for 2 years) | N/A |
| 5.29 Cooking oil? Stored properly, No spillage, Collected by authorised collector | | | |
| 5.30 Outside bin area tidy? | ✓ | 5.34 Is any surplus food (bakery) being put into the feed chain or going to animals? If yes - details of where food is going and pass to TS | N/A |
| 5.31 Bins inside satisfactory? | ✓ | | |

Part 6: Temperature Control
 ✓ = Satisfactory, ⊗ = Unsatisfactory [⊗ must result in a comment on IRF], N/A = Not applicable

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------|-----|
| 6.1 Able to demonstrate conformance with 4hr rule for chilled hold? <i>lanaly</i> | ✓ | 6.4 Able to demonstrate conformance with 2hr rule for hot hold? | N/A |
| 6.2 Is cooling done safely? | | 6.5 Devices for temperature monitoring? | ✓ |
| 6.3 Does the business prepare fish to consume raw e.g. sushi/sashimi? (Check that fish is frozen at -20°C for at least 24 hrs?) Detail in comments box. Does not apply to FARMED salmon, Atlantic halibut, rainbow trout. Has to be these fish and FARMED | N/A | 6.6 Use of independent thermometer? (Probe and/or storage thermometers) | ✓ |
| | | 6.7 Adequate sanitisation? | ⊗ |
| | | 6.8 Thermometer calibration? | ⊗ |

6.11 Officers Temperature Checks

| Equipment | Location | Temp °C | Product | Location | Temp °C |
|------------------|----------------|------------|---------|----------|---------|
| a. <i>Fridge</i> | <i>Kitchen</i> | <i>3-1</i> | d. | | |
| b. | | | e. | | |
| c. | | | f. | | |

Comments on temperature control
*No hot food available @ time
 Prep. only*

Part 7: Traceability and Supplier Control
 ✓ = Satisfactory, ⊗ = Unsatisfactory [⊗ must result in a comment on IRF], N/A = Not applicable

| Traceability | | Supplier Control | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------|-----|
| 7.1 Able to trace food one step back? | ✓ | 7.5 Arrival in opening hours? | ✓ |
| 7.2 Traceability documentation available on site? | ✓ | 7.6 Rejection procedure for unsatisfactory deliveries? | ✓ |
| 7.3 Able to trace food forward to businesses? Detail businesses below | N/A | 7.7 Supplier control and approval system? | |
| 7.4 Discuss if approval required? (supply to other businesses) | N/A | 7.8 No SRM on premises (only blue strips on labels of bovine carcasses.) (if N talk to Manager) | N/A |
| 7.9 Does business (incl retail and caterers) sell Live Bivalve Molluscs (Oysters, Mussels, Clams etc)? Officer to inspect receipts. 60 day retention of certificates? Traceability/invoice/approved numbers? | | NO | |

7.10 Imported Foods **Officers Traceability Checks**

| | |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Are there any imported foods? | Foodstuffs likely to fail food safety requirements based on current EC 669/2009 Annex 1 (PNAO), at 1 st point of destination after port CVED (POAO) or CED (PNAO) |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Product Name and Description | Category - Imported POAO, - Imported FNAO, - EU/EEA prod | Details of Check and Results |
|------------------------------|----------------------------------------------------------|------------------------------|
| a. | | |

7.11 Notes/Diagrams
 b.

Legislation covered by Inspection: Food Safety & Hygiene (England) Regulations 2013 Food Safety Act 1990 (as amended) Health & Safety at Work etc. Act 1974 Other legislation.....
Reason for Visit: Proactive Reactive Advisory Sample Taken (detailed below) Revisit

Name of Premises HIMALAYA MOTO HOUSE Business Type RESTAURANT/TAKEAWAY

Address 28 FARNHAM DRIVE CAVERSHAM RG4 6NY

Registered Office Address as above

Email [REDACTED] Tel/mobile 01189484818

Person Seen MR BIR CHHANTYAL Position OWNER

Name of Food Business Operator/Dutyholder as above

Business days & hours 7 DAYS 5-10.30pm Areas Checked KITCHEN, STOCK, REAR YARD

List of Documents checked ✓ = Yes x = Not available \ = not applicable Written FSMS Cleaning Log
FH Training Policy /records Fridge/Freezer Temperature Log Hot Food Temperature Log Pest Control
Health and Safety: Policy Risk Assessments (Details.....)

Comments: Matters Arising (L = Legal Requirement + Timescale and R = Recommendation)
(Food Only: CIM=Confidence in Management, FH=Food Hygiene & Safety Practices, S=Structure; H&S: Health & Safety)

| L/R | CIM/ FH/S/ H&S | Comments |
|-----|----------------------|------------------------------------------------------------------------------------------------------------------------|
| | | <u>L = 4 WEEKS.</u> |
| L | CIM | <u>All staff trained to Level 2 with certificates ensure they receive in-house training as well - document/record.</u> |
| L | CIM | <u>Sager Food Better Business Pack used ensure chef has relevant certs.</u> |
| L | FH | <u>Label areas for food preparation to avoid cross-contamination ie raw ends to provide s/s table for meat prep.</u> |

Action Proposed: Inspection report form left Letter to follow Formal notices(s) Revisit

| Food Hygiene Rating Criteria Assessed | Good | SCORE | Poor | Your Premises Rating is |
|----------------------------------------------|------------------------|-------|------|-------------------------|
| Compliance with food safety procedures | 0 5 <u>10</u> 15 20 25 | | | <u>3</u> <u>100%</u> |
| Compliance with structural requirements | 0 5 <u>10</u> 15 20 25 | | | |
| Confidence in management /control procedures | 0 <u>5</u> 10 20 30 | | | |

Business Reply Expected: Yes No with response to the legal requirements identified above.
Officer Name M. Warren-Tubert Signature [Signature] Designation Food Officer
2nd Officer Name..... Signature..... Designation.....
Date & Time 28/6/17 2.30 am/pm. Telephone No: 0118 937 2465 Date of Next Visit ROUTINE

As the person seen at the visit, I have taken note and understand all aspects of work discussed with the Inspecting Officer OR I have received this form and I will ensure this inspection report form is passed to the Manager.
Signed [Signature] Name Bir Chhantyal Job Title Manager

Note: This report describes those matters requiring attention. The report only covers the areas inspected at the time of the visit. If you have any queries regarding this report or you do not agree with your food rating, please contact the officer named above in the first instance. If it is not resolved then write to the Licensing, Food & Safety Manager at: Environmental Health (Food & Safety), Reading Borough Council, Civic Offices, Bridge Street, Reading, RG1 2LU or email: consumerprotection@reading.gov.uk

CONTINUATION SHEET

Name of Premises Himalaya Moto House Address 28 Farnham Drive Cav.

COMMENTS Matters Arising (L= Legal Requirement + Timescale R= Recommendations)

(Food Only: CIM=Confidence in Management, FH=Food Hygiene & Safety Practices, S=Structure)

| L/R | CIM/ FH/S | |
|-----|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| L | FS | Cleaning equipment must be checked regularly & replaced as necessary ie metal scourer. |
| L | FH | Food labelling must be appropriate and staff use the same procedure with day-stickers. Recommend you have a written procedure. |
| L | FH | Probe thermometer didn't work at time of inspection. This equipment must be checked daily-if it is working (battery needed changing) and calibrated as regular check is weekly as discussed - use & boiling water. Sanitizer wipes must be provided or other suitable method to prevent cross-contamination. |
| R | | Paper towel holder to be provided at work hand basin |

Action Proposed: See Sheet One

Name of Officer H. Warren-Tubbs Signature [Signature] Date & Time 28/6/17

I have taken note and understand all aspects of work discussed with the Inspecting Officer

Signed [Signature] Job Title Buyer/Charity rep.

Note: This report only covers the areas inspected at the time of the visit and is an informal indication of areas of the business requiring attention. If you have any queries regarding this report or you do not agree with your food rating, please contact the officer named above in the first instance. If it is not resolved then write to the Food Law Manager or Health and Safety Manager, as appropriate at: Consumer Protection, Reading Borough Council, Civic Centre, Reading RG1 7AE or email: consumerprotection@reading.gov.uk

Judgments

QBD, ADMINISTRATIVE COURT

Neutral Citation Number: [2016] EWHC 1265 (Admin)

CO/345/2016

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Thursday, 14 April 2016

B e f o r e:

MR JUSTICE JAY

Between:

EAST LINDSEY DISTRICT COUNCIL

Appellant

v

ABU HANIF

(TRADING AS ZARA'S RESTAURANT AND TAKEAWAY)

Respondent

Computer- Aided Transcript of the Stenograph Notes of

WordWave International Limited trading as DTI

165 Fleet Street London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7404 1424

(Official Shorthand Writers to the Court)

Mr P Kolvin QC & Mr D Dadds (instructed by David Dadds LLP) appeared on behalf of the **Appellant**

The **Respondent** did not appear and was not represented

J U D G M E N T

(Approved)

Crown copyright©

1. MR JUSTICE JAY: This is an appeal by way of case stated from the decision of the Lincoln Magistrates' Court, District Judge Veits, given on 23 June 2015, whereby he allowed an appeal from the revocation of a premises licence by the licensing authority.
2. The appellant, the East Lindsey District Council, is the licensing authority. The Magistrates' Court in the usual way is not a party to these proceedings. The respondent, Mr Abu Hanif, trading as Zara's Restaurant and Takeaway, is the licence holder. He through a licensing consultant has submitted correspondence making various limited points, but indicating that he would not be taking any part in these proceedings.
3. The premises in question are Zara's Restaurant and Takeaway situated in North Summercoates on the Lincolnshire coast. They are licensed to sell alcohol ancillary to the supply of food. The restaurant is owned and managed by the licensee, Mr Hanif. On 29 April 2014, the premises were the subject of a joint visit by the police and immigration officers, and it was discovered that Mr Miah was working in the kitchen as a chef. It was common ground that Mr Miah had no current entitlement to remain in the UK, let alone to work. I was told that he arrived here illegally some years ago. Furthermore, it was also accepted by the respondent that he (i) employed Mr Miah without paperwork showing a right to work in the United Kingdom; (ii) paid Mr Miah cash in hand; (iii) paid Mr Miah less than the minimum wage; (iv) did not keep or maintain PAYE records; (v) purported to deduct tax from Mr Miah's salary; and (vi) did not account to HMRC for the tax deducted.
4. The police then applied for a review of the respondent's licence under section 51 of the Licensing Act 2003 and the matter came before the appellant's subcommittee on 30 June 2014. The subcommittee decided to revoke the respondent's licence. Its reasons were as follows:
5. "The subcommittee were satisfied that Mr Hanif did not take the appropriate checks of staff members having knowledge that there were problems previously at the other premises with overstayers, and that he continued to allow staff to work at Zara's restaurant without making appropriate checks.
6. The subcommittee were satisfied that Mr Hanif had not undertaken the relevant checks to ensure the employee concerned was eligible to work in the United Kingdom. Instead of not allowing employees to work if they had not provided the correct documentation he allowed them to work and paid cash in hand. With all this in mind the subcommittee were satisfied that Mr Hanif had knowingly employed person/s unlawfully in the United Kingdom.

7. The subcommittee considered the evidence by Mr Kheng on behalf of Mr Hanif and the Home Office section 182 Guidance to Licensing Authorities. The subcommittee were of the view that the premises licence should be revoked and that revocation was an appropriate step with a view to promoting the crime prevention licensing objective."

8. The respondent then appealed to the Magistrates' Court. There was a hearing on 27 March 2015, and on 23 June the district judge decided to allow the respondent's appeal. On 1 September 2015, the district judge determined the issue of costs and on 7 January 2016 he stated the case. The appeal to the district judge was de novo, but he accepted that he could only allow the appeal if the subcommittee's decision was "wrong", the burden being on the appellant before him to establish that.

9. Looking now at the stated case, the district judge noted that the respondent had received a civil penalty for employing an illegal worker under section 15 of the Immigration, Asylum and Nationality Act 2006. An immigration officer gave evidence to the effect that although by virtue of section 21 a criminal offence was committed, such proceedings were rarely brought. The district judge also noted that the police and the Council's licensing officer were no longer saying that the respondent was a serial offender, but a redacted report which was placed before the subcommittee still gave the impression that he "was in a much worse position than he actually was". As for the failure to pay the minimum wage, the district judge said this:

A. "In his evidence before me Mr Hanif accepted that he had not paid the minimum wage and this in itself can be a criminal offence. I found that this was not the main basis of the subcommittee's decision however and again there was no evidence that he had been reported for that alleged offence. It would appear from their reasons that the subcommittee used the evidence of paying cash in hand as justification for the finding that he knowingly employed Mr Miah. The prosecuting authority however appear to have taken a different view in offering the civil penalty."

10. The district judge's core reasoning was that no crime had been committed. As he put it:

A. "It appeared to me that no crime had been committed as a result of the visit to the premises in April of last year. A civil penalty had been imposed rather than prosecution for the section 21 offence and no other crime had been reported in relation to not paying the minimum wage."

11. In the district judge's view, the crime prevention objective was not engaged.

12. The district judge also criticised the subcommittee for adopting an inconsistent approach because in other similar cases only warnings were issued. Finally, he considered

that the subcommittee may have been influenced by comments in the police report, leading them to believe that they were dealing with a serial offender.

13. At the conclusion of the stated case, the district judge posed two questions for my determination. I will address these at the end of my judgment.

14. I was taken by Mr Philip Kolvin QC to various provisions of the Licensing Act 2003 as amended. Under section 4(1) and (2) a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives, which include "the prevention of crime and disorder". The provisions dealing with the review application brought by the police are contained in sections 51 and 52. Under section 52(3), the licensing authority (and on appeal the Magistrates' Court):

A. "... must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives."

15. The epithet "appropriate" was introduced by amendment in 2011. Previously the test had been stricter. In my judgment, it imports by necessary implication the concepts of proportionality and relevance.

16. Mr Kolvin submitted that the district judge erred in a number of respects. First, he wrongly held that, given that criminal proceedings were never brought, the crime prevention objective (see section 4(2)) was not engaged. The statute is concerned with the prevention rather than the fact of crime. Secondly, and in any event, the interested party had committed criminal offences in relation to tax evasion, the employment of an illegal worker, and employing an individual at remuneration below the minimum wage. As for the employment of an illegal worker, Mr Kolvin accepted that this requires knowledge on the part of the employer, and he also accepted that it is not altogether clear whether the district judge found as a fact that the respondent possessed the requisite knowledge. However, the core question is the promotion of the licensing objectives, not the fact of anterior criminal activity, and in this regard a deterrence approach is appropriate.

17. Thirdly, Mr Kolvin submitted that there was no evidence of an inconsistent approach by the subcommittee in giving warnings in some cases because all cases turn on their own facts. Finally, Mr Kolvin submitted that there was no basis for the district judge's conclusion that the subcommittee may have been influenced by a suggestion that the respondent was a serial offender.

18. I accept Mr Kolvin's submissions. In my view the district judge clearly erred. The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder.

This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. The district judge's erroneous analysis of the law precluded any proper consideration of that issue. In any event, I agree with Mr Kolvin that criminal convictions are not required.

19. To the extent that the analysis must be retrospective, the issue is whether, in the opinion of the relevant court seized of the appeal, criminal offences have been committed. In the instant case they clearly had been: in relation to tax evasion (see the common law offence of cheating the Revenue and the offence of fraudulent evasion of tax contrary to section 106A of the Taxes and Management Act 1970); and the employment of Mr Miah at remuneration below the minimum wage (see section 31 of the National Minimum Wage Act 1998). Moreover, given the evidence that Mr Miah never provided the relevant paperwork, notwithstanding apparent requests, the obvious inference to be drawn is that the respondent well knew that he could not, and that no tax code and National Insurance number had been issued. The corollary inference in my judgment is that the respondent well knew that Mr Miah could not provide the relevant paperwork because he was here illegally.

20. I also accept Mr Kolvin's submission that each case must turn on its own facts. As a matter of law, unless it could be said that some sort of estoppel or related abuse of process arose in the light of warnings given in other cases, the alleged inconsistent approach led nowhere. In my judgment, it could not be so said.

21. Finally, I agree with Mr Kolvin that there is nothing in the point that the subcommittee could have been misled about the interested party being a serial offender. The point that the subcommittee was making was the fact that the respondent had worked at premises where illegal workers were also employed meant that he should have been vigilant to the issue.

22. Thus the answer to the district judge's two questions are as follows:

A. Q. "Was I correct to conclude that the crime prevention objective was not engaged as no crimes had been proceeded with, the appellant only receiving a civil penalty?"

B. No.

C. Q. "Was I correct in concluding that the respondent had been inconsistent in similar decisions in not revoking the licence [sic]?"

D. No.

23. Having identified errors of law in the district judge's decision, the next issue which arises is whether I should remit this case for determination in the light of my ruling or whether I have sufficient material to decide the issue for myself. I should only adopt the latter course if satisfied that the issue is so obvious that no useful purpose would be served by remission. I am so satisfied. Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked. Another way of putting the matter is that the district judge had no proper basis for overturning the subcommittee's assessment of the merits.

24. It follows in my judgment that the only conclusion open to the district judge in the present case was to uphold the revocation of the respondent's licence. This appeal must be allowed and the respondent's licence must be revoked.

25. MR KOLVIN: My Lord, I'm very grateful. Can I deal with the question of costs, both here and below.

26. MR JUSTICE JAY: Yes.

27. MR KOLVIN: Should I start with here.

28. MR JUSTICE JAY: Yes.

29. MR KOLVIN: My Lord, we would ask for the costs before this court. I just want to pray in aid four very brief points. The first is the result. The second is that the district judge's approach was expressly urged on him by the respondent's legal team. Thirdly, that the respondent was expressly urged to concede this appeal to stop costs running, he was given that opportunity at pages 42 and 43 of the bundle. Fourthly, perhaps a little bit tugging at the heart strings, but there's no reason why the Council Tax payers of East Lindsey should bear the cost of establishing what has been established in this court. So we would ask for the costs up here.

30. There is a schedule and the schedule has been served upon Mr Hanif by letter dated 16 March of 2016. I don't know whether the schedule has found its way to my Lord, if not I can hand up a copy.

31. MR JUSTICE JAY: It has.

32. MR KOLVIN: It has. My Lord, I can see that VAT has been added on. It doesn't need to be because of course the Council can retrieve the VAT, so my application

is for £16,185. I know there's not a lot of explanation around my fee, but it was taken on a single fee for all work involved in relation to the case stated; advice, the skeleton argument and attendance today, so it's one single - -

33. MR JUSTICE JAY: What about your junior's fees?

34. MR KOLVIN: My learned junior is also my instructing solicitor, he wears two hats.

35. MR JUSTICE JAY: I see.

36. MR KOLVIN: He has his own firm which is Dadds LLP, and he is also a member of the bar, so although he has appeared as my junior, his fee is wrapped up in the solicitors' fees set out in the schedule.

37. MR JUSTICE JAY: Okay. What about the costs below?

38. MR KOLVIN: My Lord, I'm just trying to ascertain what the position is.

39. MR JUSTICE JAY: I thought there was no order for costs below.

40. MR KOLVIN: There was no order for costs below, that was on the basis that the appeal had been allowed. The situation in relation to costs of licensing appeals are set out in section 181 of the Act, which enables the court to make such order as it thinks fit. Normally when appeals are dismissed there is no real question about it, costs follow the event. When appeals are allowed, some further considerations come into play, which are expressed by the Master of the Rolls in a case which you may have come across called City of Bradford v Booth, which is the case where the Master of the Rolls said that local authorities shouldn't be put off from trying to make honest and reasonable decisions in the public interest. And so one has to take account additionally of the means of the parties and their conduct in relation to the dispute, but in this case of course the appeal has now been dismissed, and so we would say that the ordinary rule is that the costs should follow the event, the appeal having failed. I'm just trying to ascertain whether schedules were ever served below, in the light of the way the case came out. **(Pause)**

41. My Lord, I'm really sorry that we don't actually have the schedule here, apparently it was £15,000. If you were minded to order costs below the options are either I suppose to wait and we will have the thing emailed up, or to say, "Look, it was below, it's a little bit more complex, they should be assessed if not agreed."

42. MR JUSTICE JAY: This is going to wipe him out, isn't it?

43. MR KOLVIN: Well he has already said, I have to say, I'm just telling you frankly what I've been told this morning, that when the bundles and the schedules were served on him, he had clearly read them, but he said, "If you win in the High Court and get costs against me, then I'm just going to declare myself bankrupt." So there may well be a bit of football(?) about this, but nonetheless it was his appeal, his team raised a point which in retrospect was very surprising, and caused an awful lot of costs to be incurred.

44. MR JUSTICE JAY: Yes. Well I am going to assess the costs here in the round figure of £15,000.

45. MR KOLVIN: Thank you.

46. MR JUSTICE JAY: If there was a schedule, which you tell me there was, below, it is proportionate that I assess those costs rather than put you to the trouble of a detailed assessment, so if you could have that emailed to my clerk in due course, I will assess the costs below.

47. MR KOLVIN: Thank you, my Lord.

48. MR JUSTICE JAY: On the basis of that schedule.

49. MR KOLVIN: We're not trying to be too ambitious, but we would like to see what we can - -

50. MR JUSTICE JAY: I'll take a broad brush approach to that.

51. MR KOLVIN: Thank you.

52. My Lord, the only other thing to mention is that this isn't the only case which is kicking around the east of England where licensing subcommittees are being urged to take no action because there has been no prosecution in these immigration cases. Although I appreciate that this is hardly stellar law making, it's an application of pretty well established legal principles to the facts, I'm asking whether my Lord would be minded to certify this so that we can adduce the authority in other cases, because it's a clear statement of the law that there doesn't need to have been a prosecution. So with the practice direction in mind, would my Lord be minded to - -

53. MR JUSTICE JAY: Just remind me of the practice direction.

54. MR KOLVIN: Yes, can I hand it up?

55. MR JUSTICE JAY: Yes. **(Handed)**

56. MR KOLVIN: If Mr Hanif had come I wouldn't need to make the application. It's paragraph 6.1. The judgment has to clearly indicate that it purports to establish a new principle or extends the present law and that has to take the form of an express statement to that effect, and then 6.2 says what categories of judgment we're dealing with, which include applications attended by one party only.

57. So that's the situation we're in. In reality these judgments get around anyway, because we're dealing with administrative tribunals and not courts, but sometimes the point is taken, "Ah yes, but the court didn't certify".

58. MR JUSTICE JAY: But where's the new principle I've established?

59. MR KOLVIN: My Lord, what you have said clearly, which hasn't been said before, by dint of the fact that not many licensing cases reach the lofty heights of this building, is that there does not need to have been a prosecution in order for the crime to have - -

60. MR JUSTICE JAY: Oh, I see. Well that's so obvious it almost goes without saying, that's why it hasn't been said before.

61. MR KOLVIN: My Lord, it was obvious to everyone except the district judge, the appellant and other licensees in the east of England.

62. MR JUSTICE JAY: Okay.

63. In terms of the logistics, if you want a copy of the judgment, don't you have to pay for it?

64. MR KOLVIN: We may have to, and we would be obviously very pleased to do so.

65. MR JUSTICE JAY: Because I'm not sure that all judgments are, in the Administrative Court, they're not all transcribed and published.

66. MR KOLVIN: That is correct, and I have no doubt that my client would be - - this isn't a matter about the costs of the judgment.

67. MR JUSTICE JAY: No, fortunately it doesn't cost that much. But I will give the certification. I have never been asked to do so before, I must confess.

68. MR KOLVIN: Yes.

69. MR JUSTICE JAY: Because these cases are referred to almost willy nilly, if they're available on Lawtel or wherever.

70. MR KOLVIN: Yes, they are.

71. MR JUSTICE JAY: Then they're just provided.

72. MR KOLVIN: They get into the textbooks and they - -

73. MR JUSTICE JAY: No- one objects.

74. MR KOLVIN: Yes. It has happened once before, in relation to the meaning of the Court of Appeal judgment in Hope and Glory, and Lindblom J, as he then was, was asked repeatedly would he certify in relation to the meaning of Hope and Glory, which is an important test, and he was pretty engaged in the practice direction. But since then that judgment, there's always an argument in court about whether it can be cited or not. The difference between licensing and some other fields of law is that very few cases reach here, so when they do, the judgments of High Court judges are gold dust.

75. MR JUSTICE JAY: Yes, well I'm happy to make the certification.

76. MR KOLVIN: Thank you very much indeed.

77. MR JUSTICE JAY: We wouldn't want this point to be taken again successfully.

78. MR KOLVIN: No.

79. MR JUSTICE JAY: Now as a matter of courtesy, is the judgment, once available, sent to the district judge, or is it something that I should do informally?

80. MR KOLVIN: I don't know, my Lord, what the normal practice is. I don't think that I have previously been on a legal team which has sent judgments, but we're very happy to undertake to do so.

81. MR JUSTICE JAY: Yes, I think if you're going to get a copy, obviously you're going to send it to the respondent - -

82. MR KOLVIN: Indeed.

83. MR JUSTICE JAY: - - so he can ingest it. I think you should send it to the district judge, just saying that the judge directed that out of courtesy he should see it.

84. MR KOLVIN: We're very happy to do that. Thank you very much indeed.

85. MR JUSTICE JAY: Thank you very much.

Division/Station : Reading Licensing Dept

From : PC 5787 Simon Wheeler

To : Reading Licensing Authority

Ref : Himalaya Momo House Premises Licence Number LP3000464

Date : 27 September 2017

Tel.No.

Subject :

Supportive review representation

Thames Valley Police (TVP) are providing this representation in support of the review process relating to Himalaya Momo House, 28 Farnham Drive, Caversham, Reading, RG4 6NY, with specific regard to the undermining of Licensing objectives relating to the prevention of crime and disorder, public safety and the prevention of children from harm,

On 13th July 2017 TVP were involved in a joint enforcement visit to the premises in conjunction with Reading Borough Council and Immigration Officers.

On arrival at the premises as Officers walked towards the restaurant which is situated on the corner of a terrace of businesses a number of staff dressed in white kitchen staff jackets saw them approach and began to sprint from the rear of the premises. PC Wheeler gave pursuit and was able to catch two males and bring them back to the premises for checks to be completed.

Of the two males one was discovered not to have the right to work in the UK and the second was detained on suspicion of being in the country illegally.

TVP were also aware that other persons working within the premises made off out of the front door as Officers were dealing with the staff to the rear. It is suspected that the persons that ran from the front of the premises and that were not located were also working illegally.

Also as part of the visit a licensing inspection was carried out and TVP can confirm that the following areas of concern were noted:-

- No designated premises supervisor was in place.
- Part A of the licence was unable to be presented on request.
- Part B of the licence was not on display.
- No authorisation for the sale of alcohol was in place.
- No member of staff knew any of the four licensing objectives.
- No staff training could be produced or described.

Clearly there are a number of serious issues that were discovered at this premises as outlined above and most notably the unlicensable sale of alcohol due to the lack of DPS and the employment of a number of illegal workers.

For this reason TVP will state that this premises clearly undermines the Licensing objectives and we fully endorse the review of this premises licence undertaken by the Licensing Authority.

TVP would urge the Licensing Sub-Committee to seriously consider the options available to them within this process and we fully support the recommendations made by the Licensing Authority in relation to this premises licence review.

Narancic, Peter

From: Narancic, Peter
Sent: 28 September 2017 21:11
To: Narancic, Peter
Subject: FW: Reviews Submitted - Reading Borough Council - Himalayan Momo House [OFFICIAL]

From: Menghis Semhar [<mailto:Semhar.Menghis1@homeoffice.gsi.gov.uk>]
Sent: 28 September 2017 16:09
To: Licensing
Subject: FW: Reviews Submitted - Reading Borough Council - Himalayan Momo House [OFFICIAL]

This is an EXTERNAL EMAIL. STOP. THINK before you CLICK links or OPEN attachments.

Please see our reps below

Kind regards

Semhar Menghis
Home Office
Interventions and Sanctions Directorate | The Central Team | Immigration Enforcement
Apollo House | 3rd Floor | 36 Wellesley Rd | Croydon | CR9 2BY✉:Semhar.menghis1@homeoffice.gsi.gov.uk

From: ISD Alcohol Licensing
Sent: 27 September 2017 13:14
To: 'French, Richard'
Subject: RE: Reviews Submitted - Reading Borough Council - Himalayan Momo House [OFFICIAL]

Hi

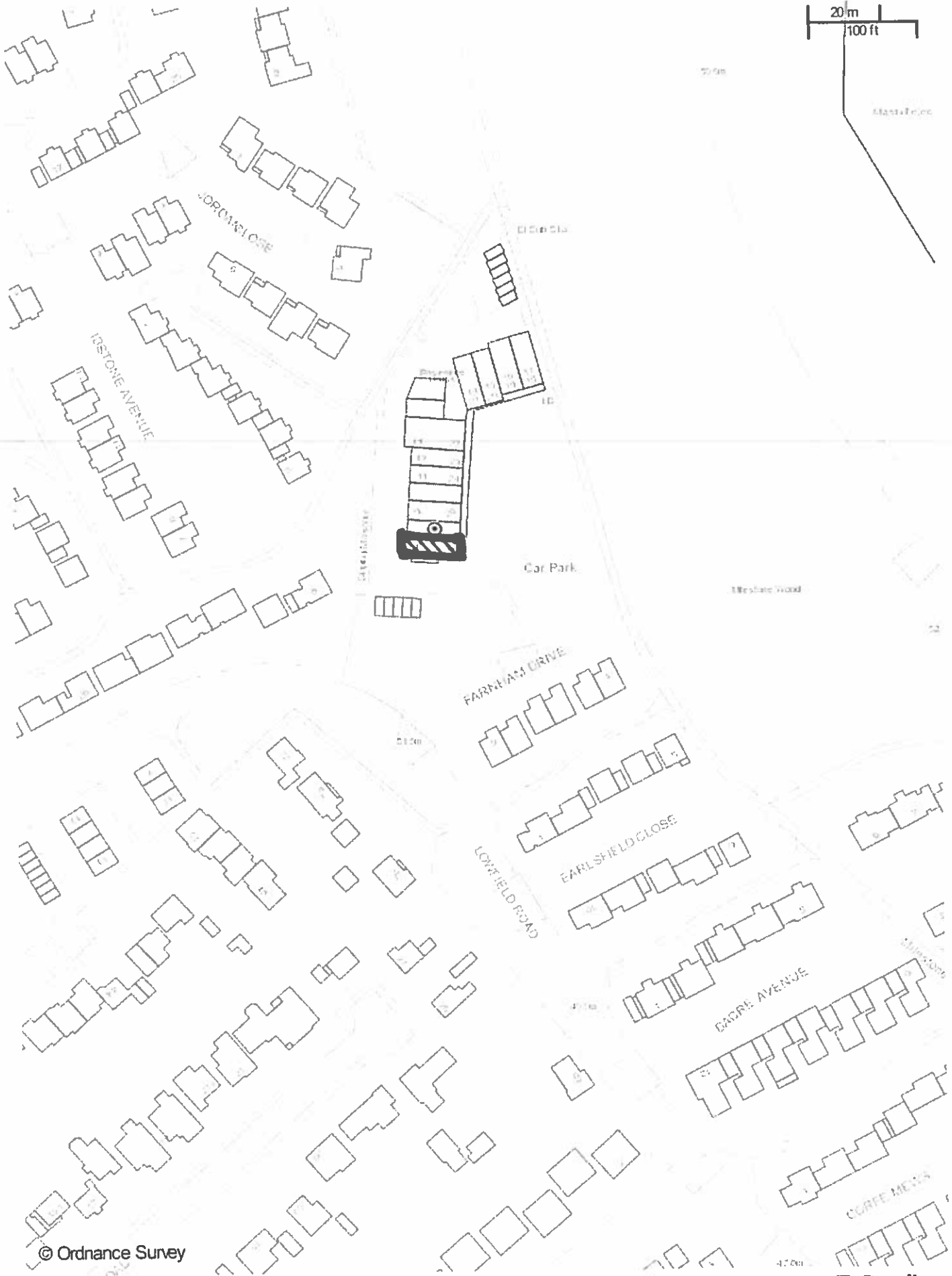
We would like to feed into the reviews. Please see below;

Himalaya Momo House, 28 Farnham Drive, Caversham RG4 6NY

Visit on 13/07/2017-Licensing visit led by Reading Borough Council. Exercised powers under Section 179 of Licensing Act 2003, as amended by the Immigration Act 2016, to enter the premises at 2057 hours.
A total of five staff encountered working, 2 were found to be offenders. An illegal working referral notice with two names was served on the business owner. Issues found by Licensing Officers for their further action. Left the premises, without incident, at 2217 hours.

Semhar Menghis
Home Office
Interventions and Sanctions Directorate | The Central Team | Immigration Enforcement
Apollo House | 3rd Floor | 36 Wellesley Rd | Croydon | CR9 2BY✉:Semhar.menghis1@homeoffice.gsi.gov.uk

APPENDIX IV



© Ordnance Survey

iShare printing
Scale: 1:1417

Printed on: 26/9/2017 at 10:53 AM

© Crown copyright and database rights 2017 Ordnance Survey 100019672



LICENSING ACT 2003 PREMISES LICENCE - PART A

Reading Borough Council being the Licensing Authority under the above Act,
HEREBY GRANT a PREMISES LICENCE as detailed in this licence.

| | |
|--------------------------------|------------------|
| Premises Licence Number | LP2002112 |
|--------------------------------|------------------|

Premises Details

| | |
|----------------------------------------------------------------------------|----------------------|
| Trading name of Premises and Address | |
| Himalaya Momo House 28 Farnham Drive Caversham Reading RG4 6NY | |
| Telephone Number | 0118 948 4818 |

| |
|-------------------------------------------------------------------------|
| Where the Licence is time limited the dates the Licence is valid |
| N/A |

Licensable Activities

| |
|------------------------------------------------------------------------------------------|
| Licensable Activities authorised by the Licence |
| Late Night Refreshment - Indoor & Outdoor Sale of Alcohol by Retail - On the Premises |

Authorised Hours for Licensable Activities

| | |
|-----------------------------------------------------------------------------------|-----------------------------|
| The times the licence authorises the carrying out of licensable activities | |
| Hours for the Provision of Late Night Refreshment | |
| Monday | from 2300hrs until 0030hrs |
| Tuesday | from 2300hrs until 0030hrs |
| Wednesday | from 2300hrs until 0030hrs |
| Thursday | from 2300hrs until 0030hrs |
| Friday | from 2300hrs until 0030hrs |
| Saturday | from 2300hrs until 0030hrs |
| Sunday | from 2300hrs until 0000hrs |
| Hours for the Sale by Retail of Alcohol | |
| Monday | from 1000hrs until Midnight |
| Tuesday | from 1000hrs until Midnight |
| Wednesday | from 1000hrs until Midnight |
| Thursday | from 1000hrs until Midnight |
| Friday | from 1000hrs until Midnight |
| Saturday | from 1000hrs until Midnight |
| Sunday | from 1200hrs until 2330hrs |

Good Friday from 1200hrs until 2330hrs
Christmas Day from 1200hrs until 2330hrs

New Year's Eve from the end of permitted hours for that day to the start of permitted hours the following day.

Opening Hours

N/A

Alcohol

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Sale of Alcohol by Retail - On the Premises

Premises Licence Holder

Name, (registered) address of holder of premises licence

Name: Mr Sirop Chapel

Address: [REDACTED] Liverpool Road, Reading, Berkshire, RG1 3PW

Additional Details

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Name: Mr Sirop Chapel

Address: [REDACTED] Liverpool Road, Reading, Berkshire, RG1 3PW

Designated Premises Supervisor

Personal Licence number and issuing authority of personal licence held by the designated premises supervisor where the premises licence authorises the supply of alcohol

Personal Licence Number: LP7002311

Issuing Authority: Reading Borough Council

This Licence shall continue in force from 14/07/2017 unless previously suspended or revoked.

Dated: 1 August 2017



Head of Environment & Neighbourhood Services

Mandatory Conditions

Supply of Alcohol

To be applied where a premises licence authorises the supply of alcohol

- 1 No supply of alcohol may be made under the premises licence:-
 - a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended
- 2 Every supply of alcohol made under the premises licence must be made or authorised by a person who holds a personal licence.

Film Exhibitions

To be applied only where a premises licence or club premises certificate authorises the exhibitions of films

- 1 The admission of children to any exhibition of any film must be restricted in accordance with section 20 of Part 3 of the Licensing Act 2003.
- 2 In the case of films which have been classified by the British Board of Film Classification admission of children to films must be restricted in accordance with that classification.
- 3 In the case of films which have not been classified by the British Board of Film Classification, admission of children must be restricted in accordance with any recommendation made by the Licensing Authority.

Door Supervisors

To be applied where a premises licence or club premises certificate includes a condition that any person must be at the premises to carry out a security activity. [Except premises with a premises licence authorising only plays or films or premises used exclusively by a club].

- 1 Each individual present at the licensed premises to carry out a security activity must be licensed by the Security Industry Authority.

Responsible Drink Promotions (commencement date 01/10/2014)

1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

Supply of Tap Water (commencement date 01/10/2014)

1. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

Age Verification Policy (commencement 01/10/2014)

1. The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

2. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

3. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

(a) a holographic mark, or

(b) an ultraviolet feature.

Drink Measurements (commencement date 01/10/2014)

1. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

Minimum Permitted Pricing (commencement 28th May 2014)

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1—

(a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) “permitted price” is the price found by applying the formula—

$$P = D + (D \times V)$$

where—

(i) P is the permitted price,

(ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

4. (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Embedded Restrictions from the Acts listed below to be carried forward to the premises licence in accordance with Schedule 8 to the Licensing Act 2003.

Unless otherwise stated this licence is issued subject to the imposition of all the relevant embedded restrictions required by the:-

Licensing Act 1964

Children & Young Persons Act 1933

Cinematograph (Safety) Regulations 1955

Cinemas Act 1985 - Film Exhibition Licence Conditions

Sporting Events (Control of Alcohol etc) Act 1985

Local Government (Miscellaneous Provisions) Act 1982 - Public Entertainment Licence Conditions

Acts applicable to this licence for the purposes of embedded restrictions

The following Acts and embedded restrictions are applicable to this licence:-

Licensing Act 1964

Licence conditions/undertakings attached to Justices Restaurant Licence

Intoxicating liquor shall not be sold or supplied on the premises other than to persons taking table meals there and for consumption by such a person as ancillary to their meal

Licensing Act 1964

s.59, 60, 63, 67A, 68, 70, 74, 76

On-licences - Permitted hours

1 Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

- a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 11 a.m. to 11 p.m.
- b) On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.
- c) On Good Friday, 12 noon to 10.30 p.m.
- d) On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- e) On New Year's Eve, except on a Sunday, 11 a.m. to 11 p.m.
- f) On New Year's Eve on a Sunday, 12 noon to 10.30 p.m.
- g) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

2 The above restrictions do not prohibit:

- a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;
- b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- c) during the first thirty minutes after the above hours the consumption of alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
- d) consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises;
- e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- f) the sale of alcohol to a trader or club for the purposes of the trade or club;
- g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- h) the taking of alcohol from the premises by a person residing there; or
- i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
- j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

Off-licences and off-sales departments of on-licensed premises - Permitted hours

1 Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

- a) On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- b) On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- c) On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m
- d) On Good Friday, 8 a.m. to 10.30 p.m.

2 The above restrictions do not prohibit:

- a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
- b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- c) the sale of alcohol to a trader or club for the purposes of the trade or club;
- d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

Club premises - Permitted hours

1 Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

- a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 11 a.m. to 11 p.m.
- b) On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.
- c) On Good Friday, 12 noon to 10.30 p.m.
- d) On New Year's Eve, except on a Sunday, 11 a.m. to 11 p.m.
- e) On New Year's Eve on a Sunday, 12 noon to 10.30 p.m.
- f) On New Year's Eve from the end of permitted hours to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).
- g) On Christmas day, as provided by the rules of the club and notified in writing by the chairman or secretary of the club to the chief executive of the justices for the petty sessions area in which the premises are. The said hours shall:
 - i. not exceed six and a half hours;
 - ii. not begin earlier than 12 noon;
 - iii. not end later than 10.30 p.m.
 - iv. provide for a break of at least 2 hours, including 3 p.m. to 5 p.m.;
 - v. not extend for more than three and a half hours after 5 p.m.

- 2 The above restrictions do not prohibit:
- (a) during the first twenty minutes after the above hours, the consumption of the alcohol on the premises;
 - (b) during the first twenty minutes after the above hours, the taking of alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
 - (c) during the first thirty minutes after the above hours, the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied as ancillary to the meals;
 - (d) the supply to, or consumption by, any person of alcohol in any premises where they are residing.

S.86A

Ports - Permitted Hours

Permitted hours are disappplied for licensed premises in approved wharfs in ports designated by the Secretary of State. Permitted hours conditions should therefore be omitted.

S87

Airports - Permitted Hours

Permitted hours are disappplied for licensed premises within examination stations in airports designated by the Secretary of State. Permitted hours conditions should therefore be omitted.

S95

Restaurant licence. Restaurant and residential licence - Permitted Hours

1 Alcohol may be sold or supplied:

- (1) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 11am to 12pm.
- (2) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12 noon to 11:30pm
- (3) On Christmas Day: 12 noon to 11:30pm;
- (4) On New Year's Eve, except on a Sunday, 11 a.m. to midnight;
- (5) On New Year's Eve on a Sunday, 12 noon to 11.30 p.m.
- (6) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

2 The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;
- (b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (d) consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the premises;

S156**Seamen's Canteens - Permitted Hours**

1 Alcohol may be sold or supplied:

(1) On weekdays, other than Christmas Day, Good Friday or New Year's Eve, from 11am to 11pm.

(2) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday, from 12 noon to 10:30pm.

(3) On Christmas Day, from 12 noon to 3pm and 7pm to 10:30pm

(4) On New Year's Eve, except on a Sunday, 11 a.m. to midnight;

(5) On New Year's Eve on a Sunday, 12 noon to 11.30 p.m.

(6) Alcohol may be sold or supplied between 3pm and 7pm on Christmas Day to persons taking table meals for consumption as an ancillary to the meal.

(6) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

2 The above restrictions do not prohibit:

(a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;

(b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;

(c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;

(d) consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the premises;

S157**Seamen's Canteens - Off Sales**

Alcohol shall not be sold or supplied for consumption outside the canteen.

S164**Off - Licence - Alcohol Consumption**

Alcohol shall not be sold in an open container or be consumed in the licensed premises.

S166**Licensed Premises - Credit Sales**

1 Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied, except alcohol sold or supplied:

(a) with and for consumption at a meal supplied at the same time, consumed with the

- meal and paid for together with the meal;
(b) for consumption by a person residing in the premises or his guest and paid for together with his accommodation;
(c) to a canteen or mess.

Licensed Canteens & Club Premises - Credit Sales

- 1 Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied, except alcohol sold or supplied with and for consumption at a meal supplied at the same time, consumed with the meal and paid for together with the meal.

S.168, 171, 201

On-licence, no children's certificate - Children in bars

- 1 No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:
- (1) He is the child of the holder of the premises licence.
 - (2) He resides in the premises, but is not employed there.
 - (3) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
 - (4) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

S.168, 171, 179, 201

Seamen's Canteens - Children in Canteens

- 1 No person under fourteen shall be in the licensed canteen during the permitted hours unless one of the following applies:
- (1) He is the child of the holder of the premises licence.
 - (2) He resides in the premises, but is not employed there.
 - (3) He is in the canteen solely for the purpose of passing to or from some part of the premises which is not a canteen and to or from which there is no other convenient means of access or egress.
 - (4) The canteen is in premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the canteen licence is ancillary.

On-licensed premises with children's certificates

1 No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:

- (1) He is the child of the holder of the premises licence.
- (2) He resides in the premises, but is not employed there.
- (3) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
- (4) The bar is in premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.
- (5) (a) He is in an area shown on the plan attached to the licence
 - (b) Meals and non-alcoholic beverages are available for sale for consumption in that area.
 - (c) He is in the company of a person aged 18 or over.
 - (d) He is there:
 - (i) prior to 9 p.m. or
 - (ii) between 9 p.m. and 9.30 p.m.
where he or the said person is consuming a meal purchased before 9 p.m.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

Annex 2

Conditions Consistent with the Operating Schedule

N/A

Annex 3

Conditions attached after a hearing by the Licensing Authority

N/A

Annex 4

Plans

As attached plan dated 5th August 2005