

To: Councillors Woodward (Chair), Maskell
(Vice-Chair) and Rowland

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24 October 2018

Your contact is: **Amy Bryan - Committee Services**

NOTICE OF MEETING - LICENSING APPLICATIONS SUB-COMMITTEE 2 - 1 NOVEMBER 2018

A meeting of the Licensing Applications Sub-Committee 2 will be held on Thursday, 1 November 2018 at 4.30 pm in the Council Chamber, Civic Offices, Bridge Street, Reading, RG1 2LU. The Agenda for the meeting is set out below.

<u>ACTION</u>	<u>WARDS AFFECTED</u>	<u>Page No</u>
1. DECLARATIONS OF INTEREST		
(a) Councillors to declare any disclosable pecuniary interests they may have in relation to the items for consideration;		
(b) Councillors to declare whether they wish to speak on the grounds they:		
(i) Have submitted a relevant representation as an interested party; or		
(ii) Will be speaking on behalf of an interested party.		
2. APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - MIAH'S GARDEN OF GULAB, WOKINGHAM ROAD, READING	PARK	3 - 78
To consider an application for the review of the Premises Licence in respect of Miah's Garden of Gulab, 130-134 Wokingham Road, Reading.		

CIVIC OFFICES EMERGENCY EVACUATION: If an alarm sounds, leave by the nearest fire exit quickly and calmly and assemble on the corner of Bridge Street and Fobney Street. You will be advised when it is safe to re-enter the building.

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LICENSING ACT 2003 HEARING ON THURSDAY 1 NOVEMBER 2018 @ 1630HRS

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE

1. Premises:

Miah's Garden of Gulab
130-134 Wokingham Road
Reading
RG6 1JL

2. Applicants Requesting Review:

Home Office Immigration Enforcement

3. Grounds for Review

A joint visit to the premises by officers of Home Office Immigration Enforcement and the Licensing Authority on 13th May 2018. The visit was carried out following a referral from the Slough Modern Slavery Sub Group. The visit uncovered the following:

1. Five illegal workers were found on the premises who did not have the right to work in the UK. This is contrary to the various Immigration Acts and is considered as one of the most serious offences to take place in licensed premises under the Licensing Act 2003. The employment of illegal workers on a licensed premises is contrary to paragraphs 11.27 and 11.28 of the Secretary of State's Guidance to the Licensing Act and undermines the prevention of crime and disorder licensing objective. The finding of one illegal worker is sufficient for the serious consideration to be given to revoke the premises licence. Out of the five illegal workers, 3 were overstayers and 2 were illegal entrants into the UK.

2. There was a complete lack of licensing compliance; best practice procedures or any evidence that the licensing objectives were being actively promoted. Part A and Part B of the licence and a Section 57 notice could not be found - these are all legal documents that should be produced to authorised officers. There was no evidence that any member of staff had been authorised to sell alcohol or even knew what the premises' age verification policy was. Both of these are breaches of the mandatory conditions attached to the premises licence. There was also no evidence of any staff training or any knowledge of what the licensing objectives are. All licence holders are supposed to be actively promoting the licensing objectives.

4. Date of receipt of application: 30th August 2018

A copy of the review application received is attached at **Appendix LIC-1**

5. Date of closure of period for representations: 27th September 2018

6. Representations received:

During the 28 day consultation period, representations were received in regard to this review application from:

Reading Borough Council Licensing Team at **Appendix LIC-2**
Thames Valley Police at **Appendix LIC-3**

Additional information was received from Home Office Immigration Enforcement on 3rd September 2018 and that is found at **Appendix LIC-Additional Info**

7. Background

The premises is located in East Reading on the main Wokingham Road.

The Premises Licence Holder is stated as: Jamshed Miah

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 LIC-4**.

The times the licence authorises the carrying out of licensable activities

Hours for the Performance of Live Music

Monday	from 1100hrs until 0030hrs
Tuesday	from 1100hrs until 0030hrs
Wednesday	from 1100hrs until 0030hrs
Thursday	from 1100hrs until 0030hrs
Friday	from 1100hrs until 0030hrs
Saturday	from 1100hrs until 0030hrs
Sunday	from 1100hrs until 0030hrs

Hours for the Playing of Recorded Music

Monday	from 1100hrs until 0100hrs
Tuesday	from 1100hrs until 0100hrs
Wednesday	from 1100hrs until 0100hrs
Thursday	from 1100hrs until 0100hrs
Friday	from 1100hrs until 0100hrs
Saturday	from 1100hrs until 0100hrs
Sunday	from 1100hrs until 0100hrs

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 0030hrs

Hours for the Sale by Retail of Alcohol

Monday from 1100hrs until 0030hrs
Tuesday from 1100hrs until 0030hrs
Wednesday from 1100hrs until 0030hrs
Thursday from 1100hrs until 0030hrs
Friday from 1100hrs until 0030hrs
Saturday from 1100hrs until 0030hrs
Sunday from 1100hrs until 0030hrs

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.

Hours the Premises is Open to the Public

Monday from 1100hrs until 0030hrs
Tuesday from 1100hrs until 0030hrs
Wednesday from 1100hrs until 0030hrs
Thursday from 1100hrs until 0030hrs
Friday from 1100hrs until 0030hrs
Saturday from 1100hrs until 0030hrs
Sunday from 1100hrs until 0030hrs

8. Licensing Objectives and Reading Borough Council's Licensing Policy Statement

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:-

- the prevention of crime and disorder;
- public safety
- the prevention of public nuisance
- the protection of children from harm

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.

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 2018

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;

Purpose

1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

1.8 The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

The role of responsible authorities (eg Police)

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, 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 usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities 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.

Hearings

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

11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities.

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.

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.

15. Enforcement

15.1 General

15.1.1 Reading Borough Council and Thames Valley Police have established a joint enforcement approach. The protocols provide for the targeting of agreed problem and high-risk premises, with a lighter approach applied to well managed and maintained premises.

15.3 Inspections

15.3.1 The Authority will carry out routine inspections at all premises where a premises licence is in force. In addition, where a complaint or an application for a review of a premises licence is received, the premises will be inspected. The Council and Thames Valley Police will continue to liaise and may carry out joint inspections of premises. This partnership approach is intended to maximise the potential for controlling crime and disorder at licensed premises and ensure compliance with relevant licensing conditions.

Relevant Case law for consideration

East Lindsey District Council v Abu Hanif (2016) - attached at appendix LIC-5

Licensing Authority: Reading Borough Council
Reference: AL17140

**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 Home Office Immigration Enforcement

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 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 Miah's Garden of Gulab 130-134 Wokingham Road,	
Post town Reading	Post code (if known) RG6 1JL

Name of premises licence holder or club holding club premises certificate (if known) Mr Jamshed Miah
--

Number of premises licence or club premises certificate (if known)

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

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) Alcohol@homeoffice.gsi.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
 - 2) public safety
 - 3) the prevention of public nuisance
 - 4) the protection of children from harm

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

We have grounds to believe the license holder will fail to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities (RA) in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences and applications to vary a Designated Premises Supervisor (DPS)), and in some limited circumstances personal licence applications. In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of a licence or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working.

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

On 13/05/2018 an enforcement visit was conducted. Entry was gained under s179 Licensing Act 2003 at 19:45. The Notice to Occupier was served at 19:48 to a male waiter, and the reasons for entry were explained by an immigration officer and the Licensing Officer from Reading Borough Council, Peter NARANCIC. The reason for the slight delay was that an attempt was made to locate a manager or individual in charge, although nobody was forthcoming.

Upon entering, a member of the public began filming officers on his mobile phone. This was challenged initially, although the member of public did not interfere with our work, and mostly kept out of the way.

A total of 10 staff were located on the premises, with one entering later and another located outside who stated he worked as a delivery driver. Of the 10 staff located, 5 were found to be offenders.

Of the 5 offenders located, 3 were arrested under Schedule 2 Paragraph 17(1) Immigration Act 1971aa, as persons liable to be detained under Schedule 2 Paragraph 16(2) Immigration Act 1971aa.

Q&As were conducted with all offenders by their arresting officers. Two individuals were not arrested however were found without valid leave to remain or permission to work. They were not arrested due to complications in their current outstanding applications or due to mitigating circumstances. They were both escorted from the premises following enquiries by their arresting officers.

The other three were all taken to Immigration Detention. Due to the fact that no manager or individual in charge was able to be identified, a Q&A was not able to be conducted with anyone considered in charge of the premises.

An Illegal Working Civil Penalty Referral Notice was served to an individual at the premises prior to leaving, and the possible repercussions were explained to him.

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
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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 *em*
.....

Date *30/08/2018*
.....

Capacity **Responsible**
Authority.....
.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Alcohol Licensing Team Lunar House 40 Wellesley Road	
Post town Croydon	Post Code CR9 2BY
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) Alcohol@homeoffice.gsi.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.

Miah's Garden of Gulab – 13-05-2018

12 Officers attended the above premises at 19:45, with 4 officers being deployed to rear cover in the first instance and the rest entering through the front of the premises. I attempted to locate the manager/individual in charge but was informed that the business owner, a Jamshed Miah, was not on the premises. A waiter, Shahajanur Rahman, attempted to call Jamshed Miah, and informed me that he would be arriving in approximately 10-15 minutes. I introduced myself, presenting my warrant, and introduced my colleague Peter Narancic, a Licensing Officer from Reading Borough Council.

At 19:48, I served the Notice to Occupier to Shahajanur Rahman, as he appeared to be the most senior member of staff on the premises, although he denied any knowledge of the management process and could not present any employment records. I further explained that we were entering the premises under s179 Licensing Act 2003 and explained the reasons for our visit.

Upon entering, a member of the public immediately began filming the incident on his mobile phone, and when I confronted the male, he stated he was intending to keep "us [officers] honest". I made all officers aware that we were being recorded. Fortunately, the interest in recording only lasted as long as the wait for his take-away order.

One male was identified at the rear of the premises, sitting in his car, and when officers spoke to the male, he confirmed that he was a delivery driver for the premises and was invited into the premises to have his identity checked. All other staff were identified either at the front of house or in the kitchen.

One male was also identified behind the bar on entering, and was presented in smart clothing, but was adamant that he was not working at Miah's Garden of Gulab.

In total, 5 offenders were located at Miah's Garden of Gulab who were either present in the UK unlawfully, or did not have permission to work in the UK. These offenders were identified as:

Of the 5 offenders, 3 were arrested under Schedule 2 Paragraph 17(1) Immigration Act 1971aa, and were subsequently detailed under Schedule 2 Paragraph 16(2) Immigration Act 1971aa following the visit. The other 2 were given immigration bail, and were escorted from the premises at the time that officers concluded the visit.

The owner, Jamshed Miah, failed to return to the premises while we were present, and Shahajanur Rahman then stated that Jamshed Miah's wife was in hospital and that he would not be able to attend. It was not clear how Shahajanur Rahman obtained this information and why he did not disclose this at an earlier time. As a result of Jamshed Miah failing to return to the premises, I served the Illegal Working Civil Penalty Referral Notice to Shahajanur Rahman in Jamshed Miah's absence.

To confirm, an interview was not conducted with the manager at the premises due to the fact that he was absent. I attempted to ask Shahajanur Rahman some questions regarding the staff, however he pleaded ignorance and seemed very reluctant to answer any questions that may implicate Jamshed Miah.

5 offenders encountered – 3 x Overstayers and 2 x Illegal Entrants

Overstayer One

Stated he had worked there for four years as it is his cousins restaurant. His position is second chef. He was employed by Jamshed MIAH. He works from 1700-2300. He is being paid £240 per week, cash in hand. He also benefits from free food and accommodation is with his cousin. When asked what his address was, he said the accommodation above the restaurant. He was not asked for any documentation in order to get the job.

Illegal Entrant One

When asked how long he had worked at Miahs, he stated he was helping out. He has been helping out for 5-6 months. He gets paid “pocket money”, £5 to £10. He works 2 days per week. He benefits from free food. He did not show any documents in order to get the job. His role is a waiter. He was employed by Anamul Islam

Overstayer Two

Subject was found behind the bar, dressed smartly when officers arrived. He stated that he was not working and was there to see Mr Miah about a family problem. When asked why he was behind the bar, he stated that he had worked there previously about 7 or 8 years ago when he had a visa. He claims he last visited the restaurant a week or 2 ago. When asked how long he had been at the restaurant on this occasion he replied saying 4 to 5 hours. When asked if he ever helps out, he replied “No”

Illegany Entrant Two

When asked how long she had worked at Miahs, he replied “Last week, 2 days, not working, just helping out when busy”. He is a kitchen helper and benefits from free food and accommodation. He is paid £20 cash each time he helps. He works from 5pm to 9pm. He was not asked for any documentation in order to get the job.

Overstayer Three

Subject was encountered in a car at the rear of the premises. He confirmed he was employed by Miahs. He confirmed he is a delivery man and works two days per week. He has worked there for 3 or 4 weeks. He was unable to confirm who gave him the job. He was unable to confirm who the boss is and unable to confirm the name of the person who pays him. Stated he receives pocket money for working. He did not show any documentation in order to get the job. He later stated that the boss is Rahim in reception and he is paid £7 per hour.

All officers then left the premises at 21:12.

The visit outlined above was conducted following a referral the Slough Modern Slavery Sub Group. Visits were conducted by Reading Borough Council and the Fire Service investigating Potential Victims of Modern Slavery (PVoMS), and there was no substantial evidence of any PVoMS at the premises.

A visit has been conducted historically to the premises on 31-10-2006, at which time no offenders were identified.

This was the first of three visits to restaurants operated by Jamshed Miah and Fakrul Islam, the other two being:

Miah's of Pangbourne, 26 Reading Road, Pangbourne, Berks, RG8 7LY (26/06/18 – 3 immigration offenders found working illegally).

Miah's Spencers Wood, Tankerton House, Basingstoke Road, Spencers Wood, RG7 1AE (10/08/18 – 4 immigration offenders found working illegally).

In total 12 immigration offenders have been found to be working illegally across the three premises. Jamshed Miah is the premises licence holder for all three establishments.

LICENSING TEAM REPRESENTATION

Name of Officer	Peter Narancic Senior Licensing and Enforcement Officer						
Type of Application	Review of a Premises Licence - Licensing Act 2003						
Name of Premises	Miah's Garden of Gulab						
Address	130 Wokingham Road Reading RG6 1JL						
Licensable Activities	Sale of Alcohol by Retail - On & Off the Premises Performance of Live Music - Indoor Playing of Recorded Music - Indoor Provision of Facilities for Making Music - Indoor Provision of Facilities for Dancing - Indoor Late Night Refreshment - Indoor						
Finish Times	Mon	Tue	Wed	Thu	Fri	Sat	Sun
	x	x	x	x	x	x	x
Content of Application:							
<p>On 30 August 2018, the Home Office Immigration Enforcement Service submitted an application to review the premises licence of Miah's Garden of Gulab 130 Wokingham Road, Reading RG6 1JL regarding the failure to uphold the licensing objectives, namely the Prevention of Crime and Disorder.</p> <p>The Licensing Authority is submitting this representation in support of Immigration Enforcement Service in relation to the review of the premises licence for Miah's Garden of Gulab.</p> <p><u>Background</u> The premises operates as a restaurant. The premises licence holder at the time of this submission are stated as Mr Jamshed Miah. He has been the named premises licence holder and designated premises licence holder since 2005.</p> <p>The premises licence pursuant to the Licensing Act 2003 which permit the provision of late night refreshment (the sale of hot food and drink) from 2300hrs until 0030hrs from Monday to Sunday and to sell alcohol from 1100hrs until 0030hrs Monday to Sunday together with regulated</p>							

entertainment.

The Licensing Authority believe that this review is necessary given FIVE illegal workers were found on the premises on a single occasion and the premises non-compliance in regard to conditions and Licensing law and would invite the Licensing Committee to take the steps it deems appropriate and proportionate to promote the licensing objectives.

As additional information, the Licensing team is aware that two other premises operated by Mr Miah in Wokingham and West Berkshire, also instigated by the Home Office Immigration Enforcement Service are being reviewed as illegal workers were found in these premises.

Licensing Officer's Comments:

The Licensing team in partnership with Thames Valley Police and the Home Office Immigration Enforcement Service jointly visit and inspect licensed premises within Reading. Particular attention is paid to premises where there have been previous incidents where the Licensing Objectives have not been supported. As you will be aware there have been numerous premises found in Reading with illegal workers since joint these partnership inspection started.

The premises were visited these premises on Sunday 13 May 2018 in a joint operation between the Licensing team 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. This, more often and not, is the detection of persons working in a licensed premises who have no legal right to work in the UK which would be contrary to the various Immigration Acts, which therefore undermine the prevention of crime and disorder licensing objective. In addition an inspection was conducted to ensure that the conditions on the premises licence were being adhered to. When it was established Mr Miah was not present, the duty manager Mr Shajahur Raham assisted us. At the time of our visit, the restaurant had several customers sat at tables and others ordering takeaway meals. Mr Raham telephoned Mr Miah requesting that he come to the premises, but he failed to do so. We were there over an hour.

During the inspection FIVE illegal workers were found working in the restaurant.

It is the duty of any responsible employer to ensure that the correct right to work checks are carried out. Clearly, right to work checks are not being carried out.

The Licensing team is very concerned that the Mr Miah, a premises licence holder of long standing has clearly failed to uphold the licensing objectives.

Reading Borough Council's Licensing Policy statement clearly states that its Vision is "To promote Reading as a safe and healthy environment in which responsible operators provide lawful and responsible facilities for the enjoyment of the Town's residents and visitors".

The statement of Licensing Policy is underpinned by four core objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

Summary of Licensing issues found:

1. No Part A Premises licence.
2. Part B summary - Expired copy displayed.
3. No premises plan.
4. No Section 57.
5. No staff authorisation (for sale of alcohol).
6. No age verification policy.
7. No staff training records.
8. Manager did not know the four licensing objectives.

A copy of the letter detailing these breaches of the premises licence sent to the premises licence holder can be found at Appendix PN-1. A copy of the inspection form can be found at Appendix PN-2. Although Mr Miah contacted the office, following the letter being posted. Mr Miah has not confirmed in writing that he has completed all actions highlighted in the Officer's letter, to confirm he his premises is fully compliant.

In summary, the offence outlined in this review application are some of the most serious contained within the Licensing Act 2003. The employment of any illegal worker 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. The licence holder has shown a complete disregard for all manner of laws and has committed extremely serious criminal offences from the premises which 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.

As already mentioned, It is the duty of any responsible employer to ensure that the correct right to work checks are carried out. This has been a legal requirement since the late 1990's. The premises licence holder has employed a person who has no right to work or live in the UK. Clearly, right to work checks were not being carried out. 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 Immigration Act 2016 also inserted paragraph 24B into the Immigration Act 1971 which states:

(1) A person ("P") who is subject to immigration control commits an offence if—

(a) P works at a time when P is disqualified from working by reason of P's immigration status, and

(b) at that time P knows or has reasonable cause to believe that P is disqualified from working by reason of P's immigration status.

(2) For the purposes of subsection (1) a person is disqualified from working by reason of the person's immigration status if—

(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 doing work of that kind.

The offence of employing illegal workers is now also a relevant offence in the Licensing Act 2003. 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. Illegal workers are often paid 'off the record' or cash in hand 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.

2. 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 this only benefits the employer financially.

3. 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. There are also numerous other issues that stem from the employment and exploitation of illegal workers - particularly as illegal workers can be wholly dependent on their employer for their continued stay in this country. Again, the only person who benefits from their employment and exploitation are unscrupulous employers:

(i) 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.

(ii) 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.

(iii) Illegal workers - because of being deliberately underpaid by their 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.

(iv) 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.

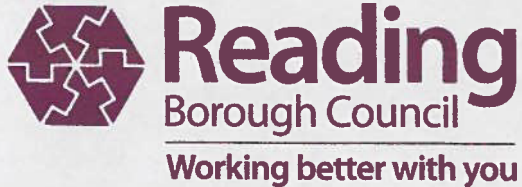
(v) Illegal entrants - who have not undergone appropriate checks or immigration clearance at the border - could be being unwittingly employed by the licence holder despite them having current or previous criminal convictions which may endanger the public. The employer or licence holder is exploiting potentially vulnerable people and engaging in a multitude of criminal offences by employing them at this licensed premises. These offences are covered under a multitude of different pieces of legislation and clearly engage the crime and disorder licensing objective.

Breach of premises licence conditions

Under the Licensing Act, every breach of condition is a criminal offence and means that licensable activity is being carried on not in accordance with an authorisation. Each breach of condition is contrary to Section 136 (1) of the Licensing Act 2003. It is worth remembering a further two points: Firstly, that conditions are attached to a premises licence as they are deemed appropriate and proportionate to promote the four licensing objectives at that premises. Secondly, the conditions currently attached to the premises licence have been on the licence since 2005.

It is clear from the evidence presented that Mr Miah has failed to uphold the licensing objectives and allowing Mr Miah to continue to operate with the benefit of a premises licence will merely serve to perpetuate the criminal activity already apparent from the findings of the licensing authority, Thames Valley Police and Home Office 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 for Miah's Garden of Gulab, 130 Wokingham Road, Reading, RG6 1JL to be revoked.

Date Received	30 August 2018	Date Due	27.09.2018
	<i>Peter Narancic</i>	Date	21.09.2018

**URGENT**

Mr Jamshed Miah
 Premises Licence Holder
 Miah's Garden of Gulab
 130-134 Wokingham Road
 Reading
 RG6 1JL

Alison Bell

Director of Environment and
 Neighbourhood Services

Civic Offices, Bridge St, Reading,
 RG1 2LU

☎ 0118 937 3787

Our Ref: LIC/PN/EVU53460

Your Ref:

Direct: ☎ 0118 9372269

e-mail: peter.narancic@reading.gov.uk

25 May 2018

Copy sent to ■ Elm Road, Earley
 RG6 9TB

Your contact is: **Mr Peter Narancic, Licensing, Environment and Neighbourhood Services**

Dear Mr Miah

Licensing Act 2003**Premises Licence Number - LP8000154****Name of Premise - Miah's Garden of Gulab****Address -130-134 Wokingham Road, Reading**

I am writing to you about my visit to your premises with Home Office Immigration Enforcement Officers on Sunday 13 May 2018. As you were not there we spoke with your manager, Mr Shahajahur Raham. He told us he had telephoned you and that you were going to attend. I also telephoned you and left a message. We waited for over an hour for you, however you failed to arrive, which is very disappointing.

Our records show that Mr Jamshed Miah has been the premises licence holder and designated premises supervisor under the Licensing Act 2003 since 2005.

I understand Immigration Enforcement officers found **FIVE** workers in your premises suspected of working in this country illegally. They will correspond with you about this matter separately. This letter will deal with the licensing inspection that was carried out. However, the Licensing Authority is very concerned that such a large number of illegal workers have been found working in your premises.

During my inspection, I found the following breaches of licensing law that require your urgent attention as outlined below. Please refer to your premises licence attached to this letter. As you will be well aware breaches of licensing law are criminal offences.

1. Part A of the premises licence was not available for inspection.
2. A current copy of summary Part B of the premises licence was not displayed.
3. You were not displaying a Section 57 (in relation to Part A Premises licence).

4. Mr Rahman could not produce an authorisation list in regard to which staff can sell alcohol under your personal licence.
5. Mr Rahman could not confirm what age verification policy you have in place.
6. A premise plan was not available for inspection.

General

1. Mr Rahman could not produce staff training records to show that you have trained your staff about the licensing Act 2003.
2. Mr Rahman did not know what the four licensing objectives are.

As a result of what we found, your premises has been graded as unsatisfactory/ high risk.

Recommendations

Under the licensing objective of prevention of crime and disorder It is very important that you have a comprehensive CCTV system installed that covers the whole of the licensing area. Storage should be a minimum of 31 days.

Please ensure that your fire alarm and fire fighting equipment is inspected annually and all fire exits kept clear of obstructions at all times. Ensure your fire risk assessment is up to date and carry out any necessary staff re-training to ensure that your staff are fully aware of all issues regarding fire safety in your premises. For more information, go to www.fire.gov.uk/Workplace+safety/WhatTheLawRequires/

Please ensure that your health and safety risk assessment is up to date. For more information, go to <http://www.hse.gov.uk/business/policy.htm>

Please ensure that above items are actioned as a matter of urgency. Please inform me in writing once you have completed everything.

Should you wish to discuss the issues, please telephone me on the number above, during office hours.

Yours faithfully

Peter Narancic

Peter Narancic

Senior Licensing and Enforcement Officer

Cc Thames Valley Police
Immigration Service
Environmental Health (Food)



Licensing Team
Reading Borough Council
Bridge Street, RG1 2LU
Tel: 01189 37 37 62
licensing@reading.gov.uk

Licensing Dept
Reading Police Station
Castle Street, RG1 7TH
Tel: 101

5
Total

PREMISES - RECORD OF INSPECTION DATED:

Licence No:	LP 8000 154
Name:	MIAS GARDEN OF GULAB
Address:	130-134 WOKINGHAM ROAD Reading, Berks RG 6 1JL
Type:	<u>Premises Licence</u> Club Premises Certificate

Licence Inspection

Correct Summary Displayed: Yes No Correct Part A/Conditions held at Premises: Yes No

Premises Licence Holder: Jamshed Miah DPS: Jamshed Miah

DPS as per Licence: Yes No DPS Present? Yes No
 Correct home address Yes No If not where? Shahajahur Rahman
 PL valid N/A Yes No ? Director (Manager) DOB 1965

If No, Reason: _____ Authorised Person: _____

Licensable Activities (Carried On)

Regulated Entertainment: Plays | Films | Indoor Sporting Events, | Boxing/Wrestling | Live Music | Recorded Music | Performance of Dance | Anything Similar

Are there any gaming machines? If so, how many? _____
 Gaming permit produced and correct? _____

Late Night Refreshment: Yes No Sale/Supply of Alcohol: Yes No Location: On | Off | Both

Does the Licence/Certificate permit activities carried on? Yes No

Conditions of Licence/Certificate

note playing of recorded music
 suggest minor variation? - remove 1964 act
 CCTV - fitted/working?

Summary of Key Points Discussed

wrong licence displayed 1000 383 17/11/2005
 Owner Mr MIAH did not show - 5 illegal workers found
 Discuss next course of action
 No training records, inadequate age verification policy

Document Checklist

Age policy operated NO over 18 some Section 57 NO Training Records NO Authorisation List NO

Awareness of the four Licensing Objectives by Licence Holder/DPS/staff: A - Good | B - Fair | C - Bad C

Inspection Outcome: Satisfactory Unsatisfactory Management focus

Lead Authority Inspecting Officer(s): Peter Narancic [Signature]

Signature of licensee or representative(s): [Signature]

Date of Inspection: Sunday 13 May 2018 20.58 hours Explained about issues

Time Started: 19:45 | Time Ended: 21.00 approx. 1.5 hours

Special conditions



CONTINUATION SHEET OF ISSUES DISCUSSED:

Misc:

Alcohol wholesale suppliers, Fire risk assessment, Health and safety, Staff training, how many staff work there, best practice examples, CCTV time/date correct? Drug Paraphernalia on sale, legal highs on sale? Food hygiene visits, good/bad management, opening hours as per licence? exposed alcohol?

2 arrests made } not called
3 ~~lockets~~ locked at.
5 instant
2 other premises + has left

Conclusion 5 illegal workers found on premises

20.25 Telephoned Mr Muah - did not answer left message

07780 [REDACTED]

Part A - not available - incorrect Part B unclear - age verification policy

No training records.

No authorisation list

No Section 57.

Manager did not know # licensing objectives (not personal licence holder)
PLH clearly not delegated responsibility to staff members when he is not on premises. officer concerned about lack of understanding of Licensing Act
No premises plan

CCTV present but not conditioned
PLH/DPS have address not confirmed.

Division/Station : Reading Police Station Licensing Dept

From : C2107 Declan Smyth

To : Reading Borough Council

Ref : Miah's Garden Of Gulab, 130-134 Wokingham Road, Reading, RG6 1JL

Date : 20th September 2018

Subject :

Supportive review representation

I C2107 Declan Smyth on behalf of the Chief Officer of Thames Valley Police wish to provide this representation in support of the review process relating to Miah's Garden Of Gulab, 130-134 Wokingham Road, Reading, RG6 1JL.

This representation is based on this premises and Mr Jamshed Miah company's failure to uphold the licensing objectives by committing offences in relation to immigration and the employment of illegal workers, as well as various breaches of the licence conditions.

Therefore this representation gives due regard to the failure of this premises, Mr Jamshed Miah and his company to support the licensing objective of prevention of crime and disorder as well as impacting negatively on all other licensing objectives.

On 13th May 2018 – The Home Office Immigration and Reading Borough Council (RBC) inspection took place at Miah's Garden Of Gulab, 130-134 Wokingham Road, Reading, RG6 1JL.

On arrival at the premises it was confirmed by the Home Office Immigration officers that 5 members of staff working within the premises were working illegally

A Reading Borough Council Licensing enforcement officer carried out an inspection of the premises licence during this process and found:

1. Part A of the premises licence was not available for inspection.
2. A current copy of summary Part B of the premises licence was not displayed.
3. The premises was not displaying a Section 57 (in relation to Part A Premises licence).
4. The manager could not produce an authorisation list in regard to which staff can sell alcohol under the personal licence.
5. The manager could not confirm what age verification policy that is in place.
6. A premise plan was not available for inspection.
7. The manager could not produce staff training records to show that they have trained the staff about the licensing Act 2003.
8. The manager did not know what the four licensing objectives are.

Thames Valley Police are also aware that of the three Miah's restaurants included within the local Berkshire chain that currently all of them have been found employing illegal workers within a four month period in 2018, and all premises licences are currently now under review.

(Please see Appendix TVP-Miah's-1 and TVP-Miah's-2)

On 26th June 2018 –Of Pangbourne, 26 Reading Road, Pangbourne, Reading, Berkshire, RG8 7LY.

As a result of this visit 2 Bangladeshi nationals were arrested as persons liable to be detained and served papers as overstayers and illegal entrants respectively. Both subjects were detained. 1 Bangladeshi male was escorted off of the premises having been working illegally and served papers to report to the home office whilst his case is decided. All 3 males were named on the Civil Penalty Illegal working notice.

On 10th August 2018 - The Home Office Immigration conducted an enforcement visit at Miah's, Spencers Wood, Tankerton House, Basingstoke Road, Spencers Wood, Berkshire, RG7 1AE.

There were 5 males in the kitchen. Of the 5 in the kitchen, 1 was reported to the Home Office and was not seen working, with all parties denying that he worked there. He was asked to leave the premises.

The other 4 males in the kitchen were found to be in the UK illegally with no right to work. All 4 were arrested and detained.

We understand that you must consider the elements of this case singularly and on its own merit, but we believe that it is pertinent for you to understand that the employment of illegal workers and poor compliance with the Licensing Act 2003 legislation is endemic of this Premises Licence Holder Mr Miah's premises.

It is the job of any responsible employer to ensure that the correct right to work checks are carried out. Carrying out right to work checks has been a requirement since the late 1990's and this is underpinned by the various Immigration Acts:

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 licence holder is exploiting potentially vulnerable people and engaging in a multitude of criminal offences by employing them at all 3 of the licensed premises within the Berkshire area. These offences are covered under a multitude of different pieces of legislation and clearly engage the crime and disorder licensing objective.

In conclusion we have a host of issues relating to this premises and the holding company including the employment of illegal workers and a number of breaches of licence conditions and noncompliance.

In itself the employment of an illegal worker is enough to consider a revocation of this licence, and as such the employment of illegal workers is a criminal activity which has serious impacts on society and can in certain circumstances have a serious and real implications connected to modern day slavery.

The current Secretary of State Guidance pursuant to the Licensing Act 2003 specifically deals with this in section 11.27 & 11.28

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 the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- For the sale and distribution of illegal firearms;
- For the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- For the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- For prostitution or the sale of unlawful pornography;
- By organised groups of paedophiles to groom children;
- As the base for the organisation of criminal activity, particularly by gangs;
- For the organisation of racist activity or the promotion of racist attacks;
- **For employing a person who is disqualified from that work by reason of their immigration status in the UK;**
- For unlawful gambling; and
- For the sale or storage of smuggled tobacco and alcohol.

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.**

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 Thames Valley Police and colleagues in Immigration Enforcement.

For these reasons Thames Valley Police respectfully recommend that the licensing Sub-committee take the only appropriate and proportionate step available to them in a situation as serious as this and revoke the licence as the only possible means to promote the licensing objectives and further support the prevention of crime and disorder.

Appendices

TVP-Miah's-1 (Miah's Of Pangbourne, West Berkshir Council review)

TVP-Miah's-2 (Miah's Spencers Wood, Wokingham Council review)

Licensing Authority: West Berkshire Council
Reference: AL17150

**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 Home Office Immigration Enforcement

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 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 Miah's Of Pangbourne 26 Reading Road, Pangbourne,	
Post town Berks	Post code (if known) RG8 7LY

Name of premises licence holder or club holding club premises certificate (if known) Mr Jamshed Miah ■ Elm Road Earley Reading Berks RG6 9TB

Number of premises licence or club premises certificate (if known)

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

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) Alcohol@homeoffice.gsi.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 type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

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

We have grounds to believe the license holder will fail to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities (RA) in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences and applications to vary a Designated Premises Supervisor (DPS)), and in some limited circumstances personal licence applications. In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of a licence or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working.

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

On 26/06/2018 an enforcement visit was conducted. Entry was gained under Section 179 Licensing Act 2003.

7 individuals were encountered on premises. 2 British nationals, 1 Romanian and Portuguese were cleared.

2 Bangladeshi nationals were arrested as persons liable to be detained and served papers as overstayers and illegal entrants respectively. Both subjects were detained. 1 Bangladeshi male was escorted off of the premises having been working illegally and served papers to report to the Home Office whilst his case is decided. All 3 males were named on the Civil Penalty Illegal working notice.

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
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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 EM

Date 30/08/2018

Capacity **Responsible Authority**.....
.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Alcohol Licensing Team Lunar House 40 Wellesley Road	
Post town Croydon	Post Code CR9 2BY
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) Alcohol@homeoffice.gsi.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.

**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 Home Office Immigration Enforcement-----

**apply for the review of a premises licence under section 51 / apply for the review of a club
premises certificate under section 87 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 Miah's Spencers Wood Tankerton House, Basingstoke Road, Spencers Wood,	
Post town Berks	Post code (if known) RG7 1AE

Name of premises licence holder or club holding club premises certificate (if known) Mr Jamshed Miah
--

Number of premises licence or club premises certificate (if known)

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

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) Alcohol@homeoffice.gsi.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
 - 2) public safety
 - 3) the prevention of public nuisance
 - 4) the protection of children from harm

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

We have grounds to believe the license holder will fail to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities (RA) in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences and applications to vary a Designated Premises Supervisor (DPS)), and in some limited circumstances personal licence applications. In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of a licence or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working.

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

On 10/08/2018 an enforcement visit was conducted. Entry was gained under S.179 Licensing Act 2003 at 17.48 hrs. 10 people were encountered, 5 front of house staff, all of whom were cleared.

There were 5 males in the kitchen. Of the 5 in the kitchen, 1 was reporting to the Home Office and was not seen working, with all parties denying that he worked there. He was asked to leave the premises.

The other 4 males in the kitchen were all found to be in the UK illegally with no right to work. All 4 were arrested and detained.

A Civil Penalties Referral Notice was served on the company with the 4 males named.

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

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 **30/08/18**

Capacity **Responsible**
Authority

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Alcohol Licensing Team Lunar House 40 Wellesley Road	
Post town Croydon	Post Code CR9 2BY
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) Alcohol@homeoffice.gsi.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.

LICENSING ACT 2003
SCHEDULE 12
PART A

PREMISES LICENCE

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

Premises Licence Number	LP8000154
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Premises Details

Trading name of Premises and Address	
Miah's Garden of Gulab 130-134 Wokingham Road Reading Berkshire RG6 1JL	
Telephone Number	0118 9667979

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

Licensable Activities

Licensable Activities authorised by the Licence
Performance of Live Music - Indoor Playing of Recorded Music - Indoor Late Night Refreshment - Indoor Sale of Alcohol by Retail - On & Off the Premises

Authorised Hours for Licensable Activities

The times the licence authorises the carrying out of licensable activities	
Hours for the Performance of Live Music	
Monday	from 1100hrs until 0030hrs
Tuesday	from 1100hrs until 0030hrs
Wednesday	from 1100hrs until 0030hrs
Thursday	from 1100hrs until 0030hrs
Friday	from 1100hrs until 0030hrs
Saturday	from 1100hrs until 0030hrs
Sunday	from 1100hrs until 0030hrs

Hours for the Playing of Recorded Music

Monday from 1100hrs until 0100hrs
Tuesday from 1100hrs until 0100hrs
Wednesday from 1100hrs until 0100hrs
Thursday from 1100hrs until 0100hrs
Friday from 1100hrs until 0100hrs
Saturday from 1100hrs until 0100hrs
Sunday from 1100hrs until 0100hrs

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 0030hrs

Hours for the Sale by Retail of Alcohol

Monday from 1100hrs until 0030hrs
Tuesday from 1100hrs until 0030hrs
Wednesday from 1100hrs until 0030hrs
Thursday from 1100hrs until 0030hrs
Friday from 1100hrs until 0030hrs
Saturday from 1100hrs until 0030hrs
Sunday from 1100hrs until 0030hrs

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

Hours the Premises is Open to the Public

Monday from 1100hrs until 0030hrs
Tuesday from 1100hrs until 0030hrs
Wednesday from 1100hrs until 0030hrs
Thursday from 1100hrs until 0030hrs
Friday from 1100hrs until 0030hrs
Saturday from 1100hrs until 0030hrs
Sunday from 1100hrs until 0030hrs

Alcohol

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

Sale of Alcohol by Retail - On & Off the Premises

Premises Licence Holder

Name, (registered) address of holder of premises licence

Name: Jamshed Miah

Address: ■ Elm Road, Earley, Reading, RG6 9TB

Additional Details

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

Name: Jamshed Miah

Address: ■ Elm Road, Earley, Reading, RG6 9TB

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: PL0377

Issuing Authority: Wokingham Borough Council

This Licence shall continue in force from 09/02/2010 unless previously suspended or revoked.

Dated: 11 February 2010

Head of Environment & Consumer Services

Annex 1

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:- <ol style="list-style-type: none">a) at a time when there is no designated premises supervisor in respect of the premises licence, orb) 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 Justice' 'Restaurant' Licence

Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his 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 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 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.

s. 60, 63, 86

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;

s.59, 60, 63, 67A, 68, 70, 74, 76, 78

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.

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.

S.168, 168A, 171, 201, Sch 12A LA

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

Conditions agreed with Environmental Protection

Prevention of Public Nuisance

- 1) The licensee shall ensure that no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to undue disturbance to local residents.
- 2) All external doors and windows must be kept closed, other than for access and egress, when events involving amplified music or speech are taking place.
- 3) Should the Council receive complaints of noise disturbance due to high levels of sound from the amplification system, the Environmental Protection team may require that a sound-limiting device be fitted to that system. This shall be located in a separate lockable cabinet, which is remote from the volume control set at a level determined by the Local Authority. The operational panel of the noise limiter shall then be secured to the satisfaction of an authorised officer from the Local Authority. The keys securing the noise limiter cabinet shall be held by the licensee only, and shall not be accessible by any other person. Access to the limiter shall be restricted to prevent tampering. No alteration or modification to any existing sound system(s) should be effected without prior agreement with an authorised officer of the Local Authority. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

Annex 3

Conditions attached after a hearing by the Licensing Authority

N/A

Annex 4

Plans

As attached plan no. 50750/1 dated 02/08/2005

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)

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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.

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