

Reading Borough Council

**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 Simon Wheeler, on behalf of the Chief Constable of Thames Valley Police**.....

*(Insert name of applicant)*

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

**Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>	
I & R Convenience Store 202 Oxford Road	
<b>Post town</b> Reading	<b>Post code (if known)</b> RG30 1AB

<b>Name of premises licence holder or club holding club premises certificate (if known)</b>
Mr Farzath Mohamed

<b>Number of premises licence or club premises certificate (if known)</b>
LP2001917

**Part 2 - Applicant details**

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

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

Please tick ✓ yes

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

**Surname**

**First names**

**I am 18 years old or over**

Please tick ✓ yes

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

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address  Thames Valley Police C/O Reading Licensing Dept Reading Police Station Castle Street Reading RG1 7 <sup>TH</sup>
Telephone number (if any) <b>101</b>
E-mail address (optional) <a href="mailto:Licensing@thamesvalley.pnn.police.uk">Licensing@thamesvalley.pnn.police.uk</a>

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

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

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

Thames Valley Police (TVP) as a responsible authority under the Licensing Act 2003 and under the objectives of prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm make an application for the review of Premises Licence No. **LP2001917**, I & R Convenience Store, 202 Oxford Road, Reading, Berkshire, RG30 1AB.

Thames Valley Police submit this application for review in order to address the failure of the premises licence holder to promote the licensing objectives via their insufficient measures to ensure due diligence and promote the licensing objectives.

An inspection was completed in March 2015 by Thames Valley Police and follow up response action completed by Reading Borough Council. Following those steps in 2015 and the recorded failures discovered in Thames Valley Police recent inspection on 26<sup>th</sup> August 2020, there have been no significant additional improvements made within this five year period.

Consequently, Thames Valley Police recently attempted to address these ongoing concerns via a stepped performance improving approach by requesting consideration for voluntary improvements to the premises licence conditions.

These were set out in a recent letter with reasonable and proportionate recommended conditions included that were designed to improve the PLH understanding of their responsibilities and required levels of due diligence in order that they could promote the licensing objectives.

Sadly, and of concern is that no current response has been received from the PLH in relation to any of our recommendations contained within that letter.

In conclusion the poor processes, lack of general due diligence and quality of practice including poor training processes encompass the failure by the PLH to promote the licensing objectives, and therefore Thames Valley Police are applying for the review of this premises licence in order to ensure that they are promoted and not undermined by this premises licence.

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

I & R Convenience Store benefits from a premises licence that allows the off sale of alcohol by retail between 0800 hours until 2300 hours Monday to Saturday and between 1000 hours until 2230 hours on Sunday.

The premises is situated on the Oxford Road, Reading in an area which suffers high levels of anti-social behaviour including street drinking and the consumption of super strength alcohol, drug usage, prostitution and other associated signal crimes such as begging, graffiti and assaults of all levels.

As an example in response to these concerns Reading Borough Council have implemented a Public Space Protection Order (PSPO) to tackle these problems. The PSPO specifically identifies street drinking via the consumption of alcohol on the streets and its interlinked anti-social behaviour as having a direct negative impact on the community. As such, the consumption of super strength alcohol on the streets enabled by poor retailing processes is one of the key areas requiring management to reduce anti-social behaviour and prevent crime and disorder.

In response, Thames Valley Police believe that it is imperative for licensed premises (and specifically those situated within this area of concern i.e. Oxford Road) act both responsibly, and in a manner that promotes the licensing objectives.

On the **23<sup>rd</sup> March 2015** Thames Valley Police conducted an inspection at the premises with Mr Farzath Mohamed. At the time Mr Mohamed (whom is now the current Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) was stated to be the shop manager).

During this inspection the following areas of concern were recorded:

- Staff working at the shop did not know who the DPS was.
- The licence summary (Part B) was not on display.
- Part A of the licence was not available and no one including Mr Mohamed had access to it.
- No one knew whom authorised them to sell alcohol.
- No written age verification policy was available.
- No training records were available or detail of any training content known.
- A suitable refusal log was not available.
- CCTV only recorded for 7 days.
- Details were passed to the TVP licensing officer Mr King and Reading Borough Council with a recommendation for follow up action.

See **APPENDIX 1**

On the **26<sup>th</sup> August 2020** Thames Valley Police conducted an inspection at the premises with staff member Thasim Nagoorichaj.

During this inspection a number of the areas of concern were recorded including many which mirrored concerns that were recorded in 2015:

- The summary of the licence was incorrectly displayed in that neither page of Part B were shown. Instead a single page of an out of date Part A was displayed.
- Part A of the licence was not available when requested.
- No written age verification policy was available.
- The most recent training document located dated to 2018 and most others 2017 and older.
- No refresher training was available and all training detail was inadequate and did not

cover all aspects of the licensing objectives.

- No written authorisation list was being utilised.
- The refusals log since 2019 had not been completed fully.
- The CCTV system retained footage for 27 days and staff were able to view but not produce copies of footage.
- The staff member did not know any of the four licensing objectives.
- No Section 57 notice was available or displayed.
- Officers noted sales of drug paraphernalia, including “crack” pipes and plastic baggies for containing and separating substances.

See **APPENDIX 2**

On the **4<sup>th</sup> September 2020** Thames Valley Police sent a letter to the Premises Licence Holder detailing the findings of the inspection and outlining a number of proposed conditions for consideration and discussion which it were felt were reasonably and necessarily required to be added to the licence to aid the PLH in the promotion of the licensing objectives.

The letter included a deadline date of 18<sup>th</sup> September 2020 for the PLH to respond to this stepped approach to dealing with the ongoing concerns at the premises.

As of the 8<sup>th</sup> October 2020, no communication in response to the letter has been received by Thames Valley Police.

See **APPENDIX 3**

Body worn video of the inspection on the 26<sup>th</sup> August 2020 can be identified as **APPENDIX 4**.

### Conclusion

Both Reading Borough Council and Thames Valley Police have undertaken inspections at this premises over the previous five years. The outcomes of these inspections have identified holistic failures in relation to the implementation of due diligence and the promotion of the licensing.

Thames Valley Police have attempted to rectify this situation with the premises licence holder via a communicated stepped approach and recent letter. We had hoped to propose what we believe to be reasonable, necessary and proportionate conditions to be included within the licence to address our concerns and promote the licensing objectives.

Within the letter we included a number of detailed and pointed conditions to aid the PLH in delivering improved processes, and recommended a further condition that restricts the provision of certain high strength beer and cider above a 6.0% abv in order to protect the community.

Unfortunately, on this occasion, no response has been received from the Premises Licence Holder, and as this premises is failing to promote the licensing objectives we therefore are submitting this application for review by the licensing sub-committee.

As stated within the case law within East Lindsey District Council v Abu Hanif, “the promotion of the licensing objectives requires a prospective consideration of what is warranted in the public interest having regard to the twin considerations of prevention and deterrence”.

It is in response to this scenario that Thames Valley Police are making this application for the review of this premises licence in order that the licensing sub-committee may have the opportunity to assess both the impact of this premises licence and the ability of the premises licence holder to promote the licensing objectives.

Thames Valley Police set out our following recommendations for consideration of the licensing sub-committee:

- **the modification of the conditions of the premises licence;**

Thames Valley Police recommend that a number of conditions are required to be added to the premises licence that shall aid the PLH promotion of the licensing objectives.

Our recommended conditions shall be included at the end of our submission.

TVP believe that the proposed conditions shall aid the PLH to promote and not undermine the four licensing objectives.

- **the exclusion of a licensable activity from the scope of the licence;**

Thames Valley Police are not recommending any exclusion of licensable activity at this time.

- **Revocation of the licence;**

Thames Valley Police are of the opinion that currently it may be prudent to provide the PLH the opportunity to improve their promotion of the licensing objectives via improved conditions and support to increase their compliance; therefore we preclude to recommend this option at this time.

- **the suspension of the licence for a period not exceeding 3 months;**

Thames Valley Police believe that a suspension of the licence coupled with the imposition of the recommended improved licence conditions may provide the PLH a period of time to implement new policies and ensure compliance.

However, we do not believe that the proposed conditions are such that they overstep what would generally be expected of any responsible operator anyway and as such do not believe that an over burdensome period of time would be required to implement these processes.

- **the removal of the designated premises supervisor;**

Thames Valley Police would recommend that this option is initially precluded at this time to provide the opportunity to show competence.

**Thames Valley Police recommended conditions:**

1. Staff employed to sell alcohol shall undergo training upon induction before they are allowed to sell alcohol. This shall include, but not be limited to:-

- The premises age verification policy
- The Four Licensing objectives
- Dealing with refusal of sales
- Proxy purchasing
- Recognising valid identity documents not in the English language
- Identifying attempts by intoxicated persons to purchase alcohol
- Identifying signs of intoxication
- Conflict management
- How to identify and safeguard vulnerable persons who attend and leave the premises.

a) Refresher training shall be provided every 6 (six) months.

b) Signed induction and refresher training records are to be kept for a minimum of 2 (Two) years of the date of training, and made available for inspection by a Police Officer or authorised officer of Reading Borough Council upon request.

c) All staff authorised to sell alcohol shall be accredited to a minimum of BII Level 1 award in responsible alcohol retailing (ARAR) or any other similarly nationally recognised approved accreditation curriculum within four weeks for existing and subsequent employees.

2. All staff to be trained to record refusals of sales of alcohol in a refusals book or electronic register. The book/register shall contain:

- Details of the time and date the refusal was made
- The identity of the staff member refusing the sale.
- Details of the alcohol the person attempted to purchase.

a) This book/register shall be available for inspection to an authorised officer of Reading Borough Council or Thames Valley Police. A weekly review of the refusals book/register shall also be carried out and signed off by the Designated Premises Supervisor or their nominated representative.

3. An incident register/log shall be used, maintained and kept on the premises to record any incident which has an impact on any of the four licensing objectives, or instances when the police have had to attend the premises.

a) The register shall be made available for inspection to authorised officers of Reading Borough Council and Thames Valley Police upon request;

4. The premises shall at all times operate a Challenge 25 age verification policy to prevent any customers who attempt to purchase alcohol and who appear to the staff member to be under the age of 25 years from making such a purchase without having first provided identification. Only a valid British driver's licence showing a photograph of the person, a valid passport, military ID or proof of age card showing the 'Pass' hologram (or any other nationally accredited scheme) are to be accepted as identification. The age verification policy shall be in a written form and displayed in a prominent position.

5. Posters advertising the premises' Challenge 25 age verification policy shall be displayed in prominent positions on the premises.

6. The Premises Licence Holder shall display in a prominent position a copy of their written policy



on checking proof of age.

7. No beers and ciders above 6.0% ABV shall be sold at any time during permitted licensing hours.

8. The premises licence holder shall ensure the premises' digitally recorded CCTV system cameras shall continually record whilst the premises are open to the public and recordings shall be kept for a minimum of 31 days with time and date stamping. The entire licensable area shall be covered by the CCTV and an appropriate number of cameras shall be installed to cover the external areas immediately outside of the premises. Data recordings shall be made immediately available to an authorised officer of Thames Valley Police or Reading Borough Council together with facilities for viewing upon request, subject to the provisions of the Data Protection Act. Recorded images shall be of such quality as to be able to identify the recorded person in any light. At least one member of staff on the premises at any time during operating hours shall be trained to access and download material from the CCTV system.

9. The premises licence holder or nominated representative shall keep and maintain all right to work documents for all staff members. Right to work documents shall be kept at the premises and produced to authorised officers of Reading Borough Council and Thames Valley Police upon request.

10. A current written authorisation list shall be displayed in a prominent position on the premises confirming the details of all current staff that have been authorised to sell alcohol by a Personal Licence Holder. The authorisation list shall include, the name of the staff member authorised, the name and personal licence details of the person authorising them to sell alcohol. This list shall also contain the date and signature of the staff member authorised and countersigned by the authorising Personal Licence Holder.

11. The premises licence holder/designated premises supervisor shall ensure that they and staff who are authorised to sell alcohol, are able to converse with customers and representatives of Statutory Agencies to a level that they are able to satisfactorily meet the four licensing objectives as contained in the Licensing Act 2003.

- I. The Prevention of Crime and Disorder.
- II. Public Safety.
- III. Public Nuisance.
- IV. The Protection of Children from Harm.

12. A section 57 notice shall be displayed in a prominent position detailing the location of the Part A of the premises licence, and a list of staff members that have an awareness of its location and content.

**Thames Valley Police submit the following sections from within the Reading Borough Council statement of licensing policy and the current Secretary of States section 182 guidance as relevant to our review application.**

### **Secretary of States Section 182 Guidance**

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- **modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;**
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- **suspend the licence for a period not exceeding three months;**
- **revoke the licence.**

11.20 In deciding which of these powers to invoke, **it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify.** The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.22 **Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented.** Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. **But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.**

## Reading Borough Council Statement of Licensing Policy

6.1 Conditions shall be appropriate and proportionate for the promotion of the licensing objectives and shall be unambiguous and clear in their stated aims. Conditions will also be tailored to the type, location and characteristics of the particular premises and the relevant licensable activities. Any condition imposed by the Authority shall also aim to avoid duplication of other legislation unless there is a requirement to impose such a condition in order to promote the licensing objectives (for example, a capacity limit for public safety reasons). This shall apply to all relevant applications (grant/variation of a premises licence or club premises certificate)

6.5 Any conditions imposed upon a premises licence or club premises certificate will be tailored to that type of premises and the style of operation. Consideration will also be given to the locality of the premises; issues in the locality; the issues set out in the Guidance and any policy, initiative or other matter the licensing authority wishes to take into account in order to promote the four licensing objectives.

9.1 It is the responsibility under the Act for all responsible authorities; licence holders and prospective licence holders to actively promote the four licensing objectives. The Council along with partner agencies, has a wider responsibility to protect the public as a whole and prevent crime, harm or nuisance from taking place.

9.15 Licensed premises that have a history of non-compliance over a period of months and years and/or incidents of serious crime taking place at that premises, will likely find that the Authority will initiate a review with a view to asking for the licence to be considered for revocation.

9.16 When considering what enforcement action to take, the Authority will always consider what is the most appropriate and proportionate step to promote the licensing objectives. The Authority is not required to wait for offences to occur before deciding it needs to take appropriate action. Case law – notably *East Lindsey District Council v Abu Hanif* – states that the promotion of the licensing objectives requires a prospective consideration of what is warranted in the public interest having regard to the twin considerations of prevention and deterrence. Similarly, the Secretary of State’s Guidance to the Licensing Act makes clear that there is no requirement for the Authority to wait for the outcome of any criminal proceedings before it initiates any enforcement action. This is the approach that the Authority will take when considering what, if any, action should be taken when condition breaches and other criminal activity is found at licensed premises.

**Furthermore Thames Valley Police recommend that when considering what enforcement action to take, the Authority will always consider what is the most appropriate and proportionate step to promote the licensing objectives. Thames Valley Police suggest that the authority is not required to wait for offences to occur before deciding it needs to take appropriate action. Case law – notably *East Lindsey District Council v Abu Hanif* – states that the promotion of the licensing objectives requires a prospective consideration of what is warranted in the public interest having regard to the twin considerations of prevention and deterrence and respectfully ask that the licensing Sub-Committee take cognisance of this factor with regards to this review application.**

A full transcript of this Case Law is provided:

**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)**

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 appellants 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.

**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

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

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Please tick ✓

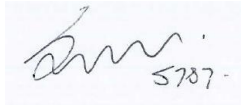
yes

- 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 08/10/2020

.....

Capacity **Thames Valley Police (Authorised officer) Reading LPA**

.....

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 6)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

## **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.