

LICENSING ACT 2003 HEARING THURSDAY 8th NOVEMBER 2018 @0930hrs

APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE

1. Premises:																																										
Miah's Garden of Gulab 130-134 Wokingham Road Reading RG6 1JL																																										
2. Applicant:																																										
Mouadjul Miah																																										
3. <u>Premises Licence:</u>																																										
<p>There is currently a premises licence pursuant to the Licensing Act 2003 in force at the premises. The current licensable hours are:</p> <p>Hours for the Performance of Live Music</p> <table style="width: 100%;"> <tr><td>Monday</td><td>from 1100hrs until 0030hrs</td></tr> <tr><td>Tuesday</td><td>from 1100hrs until 0030hrs</td></tr> <tr><td>Wednesday</td><td>from 1100hrs until 0030hrs</td></tr> <tr><td>Thursday</td><td>from 1100hrs until 0030hrs</td></tr> <tr><td>Friday</td><td>from 1100hrs until 0030hrs</td></tr> <tr><td>Saturday</td><td>from 1100hrs until 0030hrs</td></tr> <tr><td>Sunday</td><td>from 1100hrs until 0030hrs</td></tr> </table> <p>Hours for the Playing of Recorded Music</p> <table style="width: 100%;"> <tr><td>Monday</td><td>from 1100hrs until 0100hrs</td></tr> <tr><td>Tuesday</td><td>from 1100hrs until 0100hrs</td></tr> <tr><td>Wednesday</td><td>from 1100hrs until 0100hrs</td></tr> <tr><td>Thursday</td><td>from 1100hrs until 0100hrs</td></tr> <tr><td>Friday</td><td>from 1100hrs until 0100hrs</td></tr> <tr><td>Saturday</td><td>from 1100hrs until 0100hrs</td></tr> <tr><td>Sunday</td><td>from 1100hrs until 0100hrs</td></tr> </table> <p>Hours for the Provision of Late Night Refreshment</p> <table style="width: 100%;"> <tr><td>Monday</td><td>from 2300hrs until 0030hrs</td></tr> <tr><td>Tuesday</td><td>from 2300hrs until 0030hrs</td></tr> <tr><td>Wednesday</td><td>from 2300hrs until 0030hrs</td></tr> <tr><td>Thursday</td><td>from 2300hrs until 0030hrs</td></tr> <tr><td>Friday</td><td>from 2300hrs until 0030hrs</td></tr> <tr><td>Saturday</td><td>from 2300hrs until 0030hrs</td></tr> <tr><td>Sunday</td><td>from 2300hrs until 0030hrs</td></tr> </table>	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	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	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
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																																									
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																																									
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

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

4. Proposed licensable activities and hours:

The application is for the transfer of a premises licence. There is no change to the permitted licensable activities or hours.

The premises licence for 130-134 Wokingham Road is currently subject to a review application by the Home Office. This application will be determined on 1st November 2018.

5. Temporary Event Notices

In considering any application the Licensing Authority should be aware of the possible use of Temporary Event Notices to extend entertainment activities or hours of operation. A premises may extend the hours or scope of their operation by the use of Temporary Event Notices. Up to 15 events per year can be held under this provision at a particular premises. These events may last for up to 168 hours provided less than 500 people are accommodated and provided the total number of days used for these events does not exceed 21 per year.

6. Date of receipt of application: 10th October 2018

A copy of the application form is attached as **Appendix RF-1**

7. Date of closure of period for representations:

24th October 2018

8. Representations received:

During the 14 day consultation process for the application, the following representations were received from:

Thames Valley Police attached at **appendix RF-2**

It should be noted that, other than the Home Office, none of the other responsible authorities are permitted under the Licensing Act 2003 to make representations for or against a transfer application.

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

In considering representations received 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

Any conditions that are placed on a premises licence should be appropriate and proportionate with a view to promoting the licensing objectives. The Licensing Authority can amend, alter or refuse an application should it be deemed appropriate for the promotion of the licensing objectives.

The Council's licensing policy also places an onus on applicant's who wish to open past 11pm to demonstrate how they will mitigate the issues of crime and disorder and potential public nuisance.

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;

The Licensing Objectives - Crime and Disorder

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed

premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

Transfer of Premises Licences

8.101 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.

8.102 Such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police or the Home Office (Immigration Enforcement) are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that it would raise the matter immediately with the chief officer of police or the Home Office (Immigration Enforcement).

The role of responsible authorities

9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

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 Act 2003

The Licensing Act 2003 under Section 18 (6) also states that any relevant representation should be considered in the context of:

(a) the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

Therefore in the context of the grant of a licence, it is reasonable for the Licensing Authority to base its decision on an application on what the likely effects of granting a licence would have on the promotion of the licensing objectives.

Determination of Transfer Application

Transfer applications are processed and determined under Sections 42-46 of the Licensing Act 2003. Where the Licensing Authority is required to hold a hearing to determine a transfer application (after receipt of relevant representations) it must determine the application with regard to the promotion of the four licensing objectives.

Where an application is granted or refused by the Licensing Authority it must give reasons for that decision. If the application is refused, then the licence holder reverts back to the previous person named on the licence. There is the usual right of appeal against the decision of the Licensing Authority to the Magistrates Court.

The Council's Statement of Licensing Policy (22nd October 2018)

Transfer of Premises Licence

5.22 Where a licence holder wishes to transfer their premises licence to another person or body, then an application shall be made to the Licensing Authority to do so. An application form completed by the proposed new owner; a consent form giving permission for the transfer from the previous owner; the premises licence and a fee of £23 must be submitted - either electronically or in hardcopy. All hardcopy applications must also be served on Thames Valley Police.

5.23 If the authority receives a representation in relation to any proposed transfer, then it must hold a hearing in the required timescales.

5.24 A licence will lapse if the licence holder meets any of the criteria as outlined in Section 27 of the Licensing Act 2003. This means that any licence holder who dies; becomes incapacitated; becomes insolvent or has their company dissolved will see their licence lapse.

This would mean that no licensable activity can take place unless a transfer

is received within 28 days. A licence will also lapse if the holder of the licence no longer has the right to work in the UK. Should this happen, then a new licence will have to be applied for from someone who does have the right to work in the UK.

Application to transfer premises licence to be granted 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/We **Mouadjul MIAH**

(Insert name of applicant)

apply to transfer the premises licence described below under section 42 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number

LP8000154

Part 1 – Premises details

Postal address of premises or, if none, ordnance survey map reference or description

Miahs Garden of Gulab

130 Wokingham Road

Post town Reading

Post code RG6 1JL

Telephone number at premises (if any)

Please give a brief description of the premises (see note 1)

Indian Restaurant

Name of current premises licence holder

Jamshed MIAH

Part 2 - Applicant details

In what capacity are you applying for the premises licence to be transferred to you?

Please tick ☒ yes

a) an individual or individuals*

☒ please complete section (A)

b) a person other than an individual *

i. as a limited company

☐ please complete section (B)

ii. as a partnership

☐ please complete section (B)

iii. as an unincorporated association or

☐ please complete section (B)

- iv. other (for example a statutory corporation) ☐ please complete section (B)
- c) a recognised club ☐ please complete section (B)
- d) a charity ☐ please complete section (B)
- e) the proprietor of an educational establishment ☐ please complete section (B)
- f) a health service body ☐ please complete section (B)
- g) an individual who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales ☐ please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in respect of an independent hospital in England ☐ please complete section (B)
- h) the chief officer of police of a police force in England and Wales ☐ please complete section (B)

*If you are applying as a person described in (a) or (b) please confirm:

Please tick ☒ yes

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or ☒
- I am making the application pursuant to a
 - statutory function or ☐
 - a function discharged by virtue of Her Majesty's prerogative ☐

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

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

Surname

MIAH

First names

Mouadjul

Date of birth 1998

I am 18 years old or over ☒

Please tick ☒ yes

Nationality British

Current residential address if different from premises

☐ Elm Road
Early
Reading

address

Post town

Post code

RG6 5TB

Daytime contact telephone number

E-mail address
(optional)

SECOND INDIVIDUAL APPLICANT (fill in as applicable)

Mr

☐

Mrs

☐

Miss

☐

Ms

☐

Other title

(for example, Rev)

Surname

First names

Date of birth

Nationality

Current
residential
address if
different from
premises
address

I am 18 years old or over

Please tick ☒ yes

☐

Post town

Post code

Daytime contact telephone number

E-mail address
(optional)

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name	
Address	
Registered number (where applicable)	
Description of applicant (for example partnership, company, unincorporated association etc.)	
Telephone number (if any)	
E-mail address (optional)	

Part 3

Please tick ☒ yes

Are you the holder of the premises licence under an interim authority notice?

☐

Do you wish the transfer to have immediate effect?

☒

If not when would you like the transfer to take effect?

Day	Month	Year

Please tick ☒ yes

I have enclosed the consent form signed by the existing premises licence holder

☒

If you have not enclosed the consent form referred to above please give the reasons why not. What steps have you taken to try and obtain the consent?

--

Please tick ☒ yes

If this application is granted I would be in a position to use the premises during the application period for the licensable activity or activities authorised by the licence (see section 43 of the Licensing Act 2003) ☒

Please tick ☒ yes

I have enclosed the premises licence ☒

If you have not enclosed premises licence referred to above please give the reasons why not.

- I have made or enclosed payment of the fee ☒
- I have enclosed the consent form signed by the existing premises licence holder or my statement as to why it is not enclosed ☒
- I have enclosed the premises licence or relevant part of it or explanation ☒
- I have sent a copy of this application to the chief officer of police today ☒
- I have sent a copy of this form to Home Office Immigration Enforcement today ☒

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.

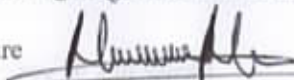
IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971] FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND, PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 2)

Part 4 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature



Date

3/10/18

Capacity Restaurant Manager

For joint applicants signature of second applicant, second applicant's solicitor or other authorised agent (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature

Date

Capacity

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

Mr M Miah
Elm Road
Early
RG6 5TB

Post town

Post Code RG6 5TB

Telephone number (if any)

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

Notes for Guidance

1. Describe the premises. For example the type of premises it is, its general situation and layout and any other information which would be relevant to the licensing objectives.
2. **Right to work/immigration status for individual applicants and applications from partnerships which are not limited liability partnerships:**

A licence may not be held by an individual or an individual in a partnership which is not a limited liability partnership who:

- does not have the right to live and work in the UK; or
- is subject to a condition preventing him or her from doing work relating to the

carrying on of a licensable activity.

Any premises licence issued on or after 6 April 2017 will lapse if the holder ceases to be entitled to work in the UK.

Applicants must demonstrate that they have the right to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensing activity. They do this by providing with this application copies or scanned copies of the following documents (which do not need to be certified).

Documents which demonstrate entitlement to work in the UK

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK [please see note below about which sections of the passport apply].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **full** birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
- A **current** Residence Card issued by the Home Office to a person who is not a national of an EEA state or Switzerland but who is a family member of such a national or who has derivative rights or residence.
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A Certificate of Application, **less than 6 months old**, issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of an EEA state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office such as the Home Office acknowledgement letter or proof of postage evidence, or evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of an EEA state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
 - evidence of the applicant's own identity – such as a passport,
 - evidence of their relationship with the EEA family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - evidence that the EEA national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - (i) working e.g. employment contract, wage slips, letter from the employer,

- (ii) self-employed e.g. contracts, invoices, or audited accounts with a bank,
- (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds; or
- (iv) self-sufficient e.g. bank statements.

Family members of EEA nationals who are studying or financially independent must also provide evidence that the EEA national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or an S1, S2 or S3 form.

Original documents must not be sent to licensing authorities. If the document copied is a passport, a copy of the following pages should be provided:-

- (i). any page containing the holder's personal details including nationality;
- (ii) any page containing the holder's photograph;
- (iii) any page containing the holder's signature;
- (iv) any page containing the date of expiry; and
- (v) any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

If the document is not a passport, a copy of the whole document should be provided.

Your right to work will be checked as part of your licensing application and this could involve us checking your immigration status with the Home Office. We may otherwise share information with the Home Office. Your licence application will not be determined until you have complied with this guidance

3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. Where there is more than one applicant, both applicants or their respective agents must sign the application form.
6. This is the address which we shall use to correspond with you about this application.

Consent of premises licence holder to transfer

I/we Jamshed MIAH

[full name of premises licence holder(s)]

the premises licence holder of premises licence number LP8000154

[insert premises licence number]

relating to

Miahs Garden of Gulab, 130 Wokingham Road, Reading, RG6 1JL

[name and address of premises to which the application relates]

hereby give my consent for the transfer of premises licence number

LP8000154

[insert premises licence number]

to

Mouadjul MIAH

[full name of transferee]

signed

name

(please print)

Jamshed MIAH

dated

3/10/18.

Division/Station : Reading Licensing Dept

From : C2107 Declan Smyth

To : Reading Borough Council

Ref : Miah's Garden Of Gulab, 130-134 Wokingham Road, Reading, RG6 Date : 16th October 2018

Subject :

Objection

I C2107 Declan Smyth, Licensing Officer on behalf of the Chief Officer of Thames Valley Police wish to formally object to the proposed application to transfer a Premises Licence from Jamshed Miah to Mouadjul Miah, relating to Miah's Garden Of Gulab, 130-134 Wokingham Road, Reading, RG6 (Premises licence Number LP8000154) under Section 42(6) of the Licensing Act 2003.
(See Appendix TVP-DS-1)

It is believed that the exceptional circumstance of this case is such that the granting of this application for transfer would undermine the crime prevention objective.

This premises licence is currently under review and awaits a hearing date having been discovered in 13th May 2018 to have been employing five illegal workers by Home Office immigration enforcement officers.

(See Appendix TVP – DS-2)

This is further compounded by a number of failures to comply with licensing legislation and breaches of licence conditions discovered in a consequent inspection undertaken by Thames Valley Police.

Thames Valley Police believe that this transfer is an attempt to circumvent the legal process (review proceeding and potential revocation of the licence). We state that due to the close personal relationship existing between the applicant Mr Mouadjul Miah (whom is the son of the current Premises Licence Holder), and Mr Jamshed Miah, who presided over the failings that led to the review of the licence That if this application to transfer the premises licence is allowed to take place that it will undermine the crime prevention objective.

The current Section 182 Secretary of States Guidance provides the following:

8.101 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises.

Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.

Paragraph 8.101 is quite specific when it states that objections although rare should be based on an exceptional circumstance where the chief officer of police believes the transfer may undermine the crime prevention objective, and where there is evidence that the individual seeking to hold the licence is linked to persons involved in crime or employing illegal workers.

In this circumstance Mr Mouadjul Miah is directly linked to Mr Jamshed Miah, and Mr Jamshed Miah has been involved in employing illegal workers at three of his restaurants in Berkshire, which is also a criminal activity.

Thames Valley Police therefore strongly believe that on the balance of probabilities it is likely that the current applicant is applying for this licence transfer on behalf of the current premises licence holder, and that it is more than possible that he is applying for the role as purely a "figure head", with the objective of enabling a ruse to prevent sanction against the illegal activity carried out within the business.

In a recent recent appeal court judgement in June 2018 District Judge Julie Cooper at Camberwell Green Magistrates Court regarding Peckham Food & Wine v London Borough of Southwark upheld the decision of the London Borough of Southwark to revoke a convenience store's premises licence following allegations of illegal workers being employed.

The Council argued, in reliance on Griffiths LJ's observations in R v Knightsbridge Crown Court ex p International Sporting Club (London) Ltd [1982] 1 QB 304, **that it risks bringing the licensing regime into disrepute if reckless licence holders can avoid the consequences of their behaviour by simply transferring the licence into someone else's name or selling the business when they got caught and so, effectively, get away with it. The deterrent effect of licensing enforcement would be lost and licensing authorities are right to take a robust stance against such transfers, particularly those which appeared to be a ruse.**
(See Appendix TVP-DS-3)

In conclusion Thames Valley Police submit that this application in relation to Mouadjul Miah constitutes exceptional circumstances, and therefore invite the Sub-Committee to refuse this application as it may specifically undermine the licensing objective for the prevention of crime and disorder, and is unlikely to promote the licensing objectives as a whole.

Appendices

APPENDIX TVP-DS-1 – Licensing Act 2003 Section 42

APPENDIX TVP-DS-2 – Thames Valley Police review representation Miah's Garden Of Gulab, 130-134 Wokingham Road, Reading, RG6 1JL Date: 20th September 2018

APPENDIX TVP-DS-3 – Camberwell Green Magistrates Appeal Court decision June 2018 (Peckham Food & Wine v London Borough of Southwark)

42 Application for transfer of premises licence

(1) Subject to this section, any person mentioned in section 16(1) (applicant for premises licence) may apply to the relevant licensing authority for the transfer of a premises licence to him.

(2) Where the applicant is an individual he must be aged 18 or over.

(2A) Where the applicant is an individual who is resident in the United Kingdom and the premises licence authorises premises to be used for a licensable activity within section 1(1)(a) or (d) he must also be entitled to work in the United Kingdom.

(3) Subsection (1) is subject to regulations under—

(a) section 54 (form etc. of applications etc.);

(b) section 55 (fees to accompany applications etc.).

(4) An application under this section must also be accompanied by the premises licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.

(5) The relevant person must give notice of the application to the chief officer of police for the police area (or each police area) in which the premises are situated.

(5ZA) Where the premises licence authorises premises to be used for a licensable activity within section 1(1) (a) or (d), the relevant person must also give notice of the application to the Secretary of State.

(5A) In subsections (5) and (5ZA), “relevant person” means—

(a) the relevant licensing authority, in a case where the applicant submitted the application to the relevant licensing authority by means of a relevant electronic facility;

(b) the applicant, in any other case.

(6) Where a chief officer of police notified under subsection (5) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

(7) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (5).

(8) Where the Secretary of State is given notice under subsection (5ZA) and is satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must give the relevant licensing authority a notice stating the reasons for being so satisfied.

(9) The Secretary of State must give that notice within the period of 14 days beginning with the day on which the Secretary of State is notified of the application under subsection (5ZA).

THAMES VALLEY POLICE

Division/Station : Reading Police Station Licensing Dept

From : C2107 Declan Smyth

To : Reading Borough Council

Subject :

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

Date : 20th September 2018

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 complany'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 complany 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)

Appeal Court upholds revocation of Premises Licence following “modern slavery” review June 2018 (Peckham Food & Wine v London Borough of Southwark)

District Judge Julie Cooper, sitting at Camberwell Green Magistrates’ Court, has upheld the decision of the London Borough of Southwark to revoke a convenience store’s premises licence following allegations of illegal workers being employed in conditions akin to “modern slavery”. Peckham Food and Wine had been found, on six separate occasions, to be employing illegal immigrant workers. A broom cupboard was being used as sleeping quarters for two workers who slept on a filthy mattress with only a small electric fan for ventilation. They were being paid a salary well below the minimum wage.

Super strength Polish lager was being sold at a price so low it must have been smuggled alcohol where duty had been evaded. Numerous breaches of the licence conditions were found.

A review application was made by Bill Masini on behalf of Southwark Trading Standards. Prior to the review hearing, an application to transfer the licence was received by the council and objected to by police. The transferee was a Mr Safeer Shah who claimed to be untainted by the past behaviour and pledged to turn around the operation. Following questioning it turned out Mr Shah was the estranged husband of the premises licence holder and related to the other directors of the operating company. The licensing sub-committee refused the transfer and revoked the premises licence.

On appeal Mr Shah argued that it was wrong to judge him by his family relationships. He was his own “autonomous” individual and had demonstrated his commitment to promote the licensing objectives. Under cross-examination it became apparent that Mr Shah had been involved in the running of the business prior to the review application. It was also revealed that two of his current employees had worked at the venue when the litany of transgressions had taken place. One was, and continued to be, an illegal worker. On inspection visits prior to the appeal hearing further breaches of the licence had been found and, under Mr Shah’s stewardship, the premises had failed a test purchase exercise by selling alcohol to a 17 year old.

The Council submitted that not only was Mr Shah properly to be tainted by the previous operation, but he had failed to demonstrate the promised turn around of the operation since he took over. The judge found him to be a discredited witness.

The Council also argued, in reliance on Griffiths LJ’s observations in *R v Knightsbridge Crown Court ex p International Sporting Club (London) Ltd* [1982] 1

QB 304, that it risks bringing the licensing regime into disrepute if reckless licence holders can avoid the consequences of their behaviour by simply transferring the licence into someone else's name or selling the business when they got caught and so, effectively, get away with it. The deterrent effect of licensing enforcement would be lost and licensing authorities are right to take a robust stance against such transfers, particularly those which appeared to be a ruse.

In refusing the appeals on 28 June 2018, DJ Cooper awarded the Council its costs of over £11,000.