

Licensing Sub Committee

Tuesday 25 October 2022

PRESENT:

Councillor Partridge, in the Chair.
Councillor Tippetts, Vice Chair.
Councillors Finn and Hulme.

Also in attendance: Sharon Day (Lawyer), Lee Staples (Senior Licensing Officer), Andrea Gilbert (Lawyer - observing), Hannah Whiting (Democratic Advisor – observing), Helen Rickman (Democratic Advisor).

The meeting started at 11.00 am and finished at 1.20 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

12. **Appointment of Chair and Vice-Chair**

It was agreed that Councillor Partridge is appointed as Chair, and Councillor Tippetts is appointed as Vice Chair for this meeting.

13. **Declarations of Interest**

There were no declarations of interest made by Members in accordance with the code of conduct.

(Councillor Finn left the meeting after the consideration of this item).

14. **Chair's Urgent Business**

There were no items of Chair's Urgent Business.

15. **Review of Premises Licence - Nibana Indian Restaurant, 7/9 Morshead Road, Crownhill, Plymouth**

The Committee:

- (1) considered report from Director of Public Health and the law, policy and guidance contained therein;
- (2) considered the written application for review and verbal representations from Home Office Immigration Enforcement as follows:
 - they believed the Premises Licence Holder (PLH) had failed to meet the Crime Prevention licensing objective as illegal working had been identified at his premises;

- immigration safeguards had been brought in April 2017 with an amendment to the Licensing Act 2003 by S.36 and Schedule 4 of the Immigration Act 2016 with the intention to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment;
- following an immigration enforcement visit on 3.12.21, four workers found working illegally and penalty notices issued to the value of £40,000. One of the workers found working illegally was the same person as had been found working illegally in 2016. The PLH had been present when the officers entered the premises.
- previous visits have taken place in 2015 and 2016 where illegal workers had been found and penalty notices issued for £20,000 in 2015 and £15,000 in 2016. During a visit in April 2021 no illegal workers were found;
- on each occasion an advice leaflet would have been left with the premises stating what checks needed to be done to ensure employees has the right to work. In particular, the officer confirmed that she had handed a leaflet to Mr Hussain at the last visit;
- it was felt that the business had a clear history of employing illegal workers and had received three civil penalties and had failed to alter its practices;
- whether by negligence or wilful blindness, illegal workers were engaged in activity on the premises on three separate occasions;
- it is a simple process for an employer to ascertain what documents they should check before a person can work. It is an offence to work when disqualified from doing so, and the offence can only be committed with the cooperation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case;
- all operations conducted by Home Office Immigration Enforcement are intelligence led;
- the premises under the control of Mr Enayeth Hussain had repeatedly employed illegal workers going back as far as 2015 and had clearly failed to meet the crime prevention objective on multiple occasions;
- they believe the illegal workers were engaged for commercial reasons by the management of the premises and that a warning was inappropriate and therefore they proceeded straight to review;
- the penalty notices were issued to Future Spice Limited as they operate the restaurant itself;

- an illegal working compliance order had not been applied for through the courts, as given the history and fines issued they did not consider that this would work or deter the premises licence holder from employing illegal workers;
- the request was that the licence be revoked as a deterrent to others and the management/owner of the premises. Applying conditions or suspension of the licence was not considered sufficient as it would not act as a deterrent to the licence holder or other premises licence holders from engaging in illegal activity by employing illegal workers and facilitating disqualified immigrants to work illegally. Illegal working is biggest driver for entry into UK and can be a part of modern slavery. Workers do not pay taxes or national insurance, they do not have a pension or any work rights. It is common place and premises are given multiple chances to comply. The checks required to be carried out are simple and if they are carried out, illegal working does not happen;

(3) considered the written response to notice of hearing and verbal representations from the Premises Licence Holder (PLH) and his solicitor as follows:

- the PLH accepts that there is justification for the review in accordance with crime prevention licensing objective;
- PLH is worried and disappointed about the application because he considered that he had been fined and that this was his punishment and had not appreciated that his licence would be reviewed;
- he accepted that there had been failings with procedures to recruit staff which had result in the employment of people who were working illegally. The issues were down to genuine mistakes being made; it was not done intentionally. They were not cutting corners to make more money. All workers were paid by bank transfer and had the same rights as all other workers. They are part of PAYE and all get a wage slip;
- they had not understood the information on the workers card relating to the occupation shortage limitation;
- the PLH now have a new policy in place of how they do their checks and they are working with local councillors now to ensure they have the right processes in place. They do ID checks, passport checks and a checklist of employees is on file;
- following the visit from Enforcement Officers in April, the director of the business had set up a gateway account on the Government website which both he and the PLH had access to. When asked why further illegal workers had been found after this had been set up the

PLH said that this was because it was a genuine mistake and had happened at a very busy time;

- there was no evidence from other responsible authorities or agencies to suggest that he is not complying fully with every other condition on the premises licence;
 - the premises does great charity work. This was supported by the letter from the Soup Run group that had been supplied. They operate the business from their heart and have never wanted a problem with licensing. The restaurant is a community place;
 - the PLH would also like the committee to take into account the livelihoods of the eleven employees at Nibana and the financial hardship that would be caused to them in the event of a suspension or revocation of the licence;
 - the workers who were interviewed gave a different account of their pay arrangements because they did not want to jeopardise their own cases;
 - the guidance issued by the Secretary of State suggested that Licensing Authorities should normally look to the police for the main source of advice in relation to Crime and Disorder. There had been no representations from them which indicated the police have no concerns about the way it operates;
 - the option was available to the committee to attach conditions to the licence and that the guidance indicated that these could be used to target illegal working. In particular, the committee were directed to paragraph 10.10 of the guidance. The Home Office were asking for the most severe penalty but the PLH had admitted his failings and paid substantial financial penalties. The problems had not arisen as an attempt to cut corners, the workers were being paid and he had changed his practices going forward. The aim was plainly to make sure there is no repeat of the illegal working happening. Nearly a year had passed since the last visit and there had been no repeat. Conditions would target that they must make sure employees have the right to work, make sure those checks are evidenced, regardless of how long the employee has worked there;
 - revocation was not the appropriate action to take but any of the options available to the committee must be appropriate and proportionate. Conditions would be the most appropriate way forward, they would set out clearly what is required of him;
- (4) considered the written representations from Councillor Singh as follows:
- he has worked with Mr Husain and Mr UI-Axam for many years;

- they have held the licence for nearly 15 years and have never had any issues in relation to any of the licensing objectives. They have a strict challenge 21 policy and have posters displayed at the front entrance and on the bar;
 - the staff, premises licence holder and DPS are all of good character; they are honest and upfront;
 - they have made a mistake and were misled by the individuals and are now paying the price. It has been expensive and they have realised their errors;
 - one of the individuals was paying full tax, national insurance and on the books;
 - one of the employees work permit card showed they were permitted to work on the shortage list;
 - they have now updated their systems in how they employ people;
 - the licence is of paramount importance to local suppliers, employment in the community and the charitable work they do in the local community;
 - they are helpful and supportive in the local community;
 - they play a pivotal role in the community during the pandemic when they were supplying curries to NHS workers and ambulance drivers;
 - every 2 months they do a soup run and feed the homeless;
- (5) in reaching their decision the committee took into account all the evidence provided by the Home Office Immigration Enforcement, the Premises Licence Holder and his solicitor, and Councillor Singh, with the exception of the following which was not deemed to be relevant to the promotion of the Licensing Objectives:
- the need to revoke the licence for a deterrent effect on other premises;
 - any charitable work carried out by the PLH;
 - the importance of the licence to local supplies and employees;
- (6) the Committee were satisfied that the Home Office Immigration Enforcement were the appropriate Responsible Authority in relation to this particular issue and the prevention of crime and disorder licensing objective, rather than the police, in this case. It noted that the PLH had said that there were new policies in place to ensure that illegal working did not occur. During the course of the committee these were shared with Home Office Immigration Enforcement. Their view was that these procedures were poor.

For example, there was no evidence of any home office checks being run on the documents or certificates referred to. There was no date that the checks had been done and no process for ensuring that checks were being carried out to ensure that expiry dates on anyone with a limited right to work were being reviewed. However, the committee considered that the PLH had demonstrated by what he had said that he was willing to comply. Given that there had been no representations from any other responsible authority, there was no reason to think that he would not comply with further conditions on his licence. The committee therefore considered that it was appropriate and proportionate in this case to impose further conditions on the licence directly relating to the right to work checks to ensure that the crime prevention licensing objective was upheld. In reaching this decision the committee had considered paragraphs 2.6, 10.10, 11.27 and 11.28 of the statutory guidance;

- (7) the Committee therefore agreed that the following conditions would be imposed on the licence:
- (a) PLH must carry out right to work checks in accordance with the guidance issued by the government (which is available on the gov.uk website) on all employees (including current employees) employed by the business;
 - (b) PLH must set up and keep a register of all right to work checks carried out for each employee (including current employees). This must include (but is not limited to) a list of the documents checked for each employee, who carried out the check, the date they were checked, the date for any expiry of their right to work and where there is an expiry date on the right to work, a date set for review for that employee;
 - (c) PLH must keep a copy of any document inspected as part of the checks made on an employee's right to work. Those records are to be kept for the duration of that person's employment and for 2 years thereafter;
 - (d) the register of right to work checks must be available for immediate inspection by any officer of the Licensing Authority, Home Office Immigration Enforcement or any police officer. It must be produced immediately on request by any of those officers. Copies of the documents inspected as part of the right to work checks must also be available for inspection and production as set out above.

16. **Exempt Business**

There were no items of exempt business.