



To be submitted to the Council at its meeting on 18th March 2021

LICENSING SUB-COMMITTEE

**19th January 2021
10.00 a.m.**

Present:

Councillors Cairns, Hasthorpe, and Watson

Officers in attendance:

- Jo Bennett (Senior Licensing Enforcement Officer)
- Rob Close (Scrutiny and Committee Support Officer)
- Adrian Moody (Licensing Manager and Environmental Protection Manager)
- Eve Richardson-Smith (Deputy Monitoring Officer)

Others in attendance:

- Zoe Bradshaw (Immigration Officer, Home Office)
- Sarah Clover (Barrister)
- Michael Kheng (Kurnia Licensing Consultants Ltd)
- Emily Price (Humberside Police – Representative)
- Steven Roper (Tale and Spirit Ltd.f Group – Applicant for Transfer)
- Mohammed Abdul Salique (Premises Licence Holder)
- Alison Saxby (Humberside Police Licensing Officer)

LSC.7 APPOINTMENT OF CHAIR

Councillor Hasthorpe was appointed as Chair for this meeting.

COUNCILLOR HASTHORPE IN THE CHAIR

LSC.8 DECLARATIONS OF INTEREST

There were no declarations of interest received in respect of any item on the agenda for this meeting.

LSC.9 REVIEW OF A PREMISES LICENCE – “SPICE OF LIFE” 8 – 12 WELLOWGATE

The Chair introduced himself, the other members of the sub-committee, and the officers present.

Mrs Richardson-Smith explained the procedure for the hearing and ensured that everyone in attendance had copies of the agenda.

Acknowledging complexity of proceedings, and that representatives from both the Home Office and Humberside Police had a total of 40 minutes allocated to address the sub-committee, Ms Clover requested that she was granted leniency if she was unable to conclude her opening statement in the allocated timeframe. The Chair agreed to Ms Clover's request.

Mr Moody summarised the application and explained that representations were received from Humberside Police, the Home Office, and the Premises Licence Holder (PLH).

The Chair invited Ms Bradshaw to address the sub-committee.

Ms Bradshaw explained that Immigration Enforcement were the team responsible for people who were currently within the UK but had potentially overstayed their visa or had entered the UK illegally. Immigration Enforcement ran intelligence led operations responding to information that businesses were employing illegal workers or people were living illegally in the UK, in breach of immigration rules. She stressed the prevalence of illegal workers in the licensing trade was so grave that the government had made significant changes to the Licensing Act 2003, by making the Home Office a responsible authority.

This review was brought by the Home Office as a responsible authority under the Licensing Act 2003, preventing crime and disorder.

She noted the PLHs had a statutory obligation to promote the licensing objectives and to ensure that the Designated Premises Supervisor (DPS) was conducting the day-to-day operations in line with expectations.

From the evidence provided within the agenda, Ms Bradshaw considered it apparent that the poor management from the PLH and DPS was a direct reflection of the poor company practices and policies.

If ultimately the failings presented were considered by the sub-committee to be a result of the current PLHs, then Ms Bradshaw stressed, that the removal of the PLH and DPS, and consideration of suspension or revocation of the premises licence, be strongly considered.

Immigration enforcement had conducted intelligence led visits to the premises in 2008, 2012, and 2015, whilst the current PLHs had been in charge. The visits resulted in arrests being made in 2012 and 2015 under

the Immigration Act 1971. She added that the premises manager at the time was verbally aggressive to an Immigration Enforcement Officer in 2015.

During the last visit to the premises in August 2019, a visit in which Ms Bradshaw oversaw, two people were arrested on suspicion of having no right to work in the UK. A civil penalty of £30,000 was issued for the employment of two illegal workers. She noted that the manager at the time was again, verbally aggressive to both Ms Bradshaw and one of her colleagues.

The employment of people who do not have the right to work in the UK, she stressed, was a serious crime and could be linked to the exploitation of vulnerable people. She added that continuing to employ people without making the legally required checks, and not making improvements to prevent such allegations again, went to demonstrate that the PLH was not robust and failed to take the responsibilities of the licensing objectives seriously.

Section 182 of the Licensing Act 2003 stated:

'The designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.'

Ms Bradshaw felt that the DPS had seriously undermined the licensing objective for the prevention of crime and disorder, by allowing immigration offenders to work at the venue in his capacity as both PLH and DPS.

Immigration Enforcement had visited the premises five times within 12 years, Ms Bradshaw stated that after the first visit, the working practices had not appeared to change, and no steps had been taken to rectify the correct process for employment and the checking of eligibility to work for members of staff. She felt the effect of a significant fine had no demonstrative effect.

In conclusion, she considered a licensee to be a person the local authority had invested trust within to behave in a responsible and diligent manner, and to promote the licensing objectives. If staff were employed without the appropriate employment checks, she asked how the sub-committee could be confident that correct training had been provided for the supply and service of alcohol.

The sub-committee were given the opportunity to ask questions of Ms Bradshaw, however, were satisfied with the statement she provided at that time.

The Chair invited Ms Price to address the sub-committee.

Ms Price explained that her representation was made in support of the application submitted by the Immigration Enforcement team of the Home Office, following the discovery of illegal workers employed on the premises in 2019. She stated the key issue was the discovery of illegal working for the third time.

She noted the PLHs had held the licence since at least 2005, with the licence being transferred under grandfather rights on the introduction of the Licensing Act 2003.

Referencing the statement submitted by Humberside Police Licensing Officer, Alison Saxby, Ms Price commented that much of the evidence submitted by Humberside Police had already been provided to the sub-committee.

Humberside Police were informed of this matter in March 2020. Ms Price noted that the details of this visit had been set out by Ms Bradshaw previously. Following that visit, a decision was taken to apply for a review of the premises licence.

Upon a visit to the premises, from both Humberside Police and North East Lincolnshire Council officers, to serve the PLH the notice of review, the officers were invited into the premises by a member of staff, before a male arrived and was referred to by staff as 'the boss'. The male identified himself as the owner of the premises and briefly conversed with officers. However, after being told the reason for the visit, the male became argumentative and dismissive, before vacating the premises. After a brief time, the initial member of staff received a telephone call from the male wishing to speak to the present officers again. The male's tone was described as 'being generally abusive', he subsequently asked the officers if they had finished what they were there for, before requesting they leave the premises.

Humberside Police submitted that the evidence showed that it was appropriate for North East Lincolnshire Council to exercise their powers on review as the prevention of crime and disorder licensing objective was being undermined by the employment of illegal workers.

Ms Price referred to a number of sections of the guidance made under section 182 of the Licensing Act 2003 in support of her case. She noted that Sub-Section 2.6 specified that:

'The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises.'

She felt that this premises was therefore in clear violation of this licensing objective. Sub-Section 11.27 of the Licensing Act 2003 specified that:

'There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously.'

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

She added that the Sub-Section 11.28 specified that:

'Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.'

In addition, she noted the impact assessment from the Home Office for the introduction of an immigration check to an alcohol and late-night refreshment licence application, stated that:

'Illegal working often results in abusive and exploitative behaviour, tax evasion, undercutting legitimate business and adverse impacts on the employment of lawful workers.'

'that firms who habitually exploit illegal labour are denied access to it.'

Ms Price explained that the view of the Chief Constable was that there had been a clear breach of legislation in regard to the employing of two illegal workers for the third time, the power of North East Lincolnshire Council to revoke the premises licence should be considered. Given the attitude of the PLH by being aggressive and intimidating towards authorities who were trying to enforce both the law and licensing objectives, this was another issue that caused Humberside Police concern and should be considered by the sub-committee. She submitted that the PLH had either deliberately, or through wilful neglect, employed illegal workers and displayed aggressive and obstructive behaviour. In conclusion, Ms Price stressed that Humberside Police felt that Mr Salique could not be considered an appropriate person to hold a premises licence, and by association, the premises themselves.

The sub-committee were given the opportunity to ask questions of Ms Price, however, were satisfied with the statement she provided at that time.

The Chair invited Ms Clover to address the sub-committee.

Ms Clover referred to the request, and subsequent refusal, for the transfer of licence application to be considered prior to this review, she noted the sub-committee's difficulty in deciding the future of this premises when it's responsibility could very shortly be in the hands of a different PLH. She added that Mr Roper of Tale and Spirit Ltd, the applicant for the licence transfer, was already running the premises and had been since December 2020.

As far as the review of the premises licence went, Ms Clover stressed that Mr Salique's interest was in clearing his name and to challenge the evidence put before him by the Home Office. If Mr Salique failed to

challenge the review, she suggested, he would be accepting the account presented by the Home Office of his conduct and practices as a correct record.

Ms Clover understood that the evidence brought by the Home Office was presented as being very serious, noting the comments made regarding public protection, protecting illegal workers, applying a deterrent, and the impact to the licensing objectives. However, Ms Clover stressed that it took 15 months for this premises to be brought to review. From a legal and appeal point of view, she commented, that extended period of time was of particular significance. Referring to the possible excuse of Covid-19 for the delay, she noted the site visit from the immigration officers took place in August 2019, some time before the effect of Covid-19 were felt. She commented that this delay would typically be devastating to any case which rested on urgency and seriousness. She suggested that from an appeal perspective, the delay would have an effect on the way in which a court would view the impact on the promotion of the licensing objectives, and the duties and responsibilities of the PLH. Therefore, the sub-committee needed to decide whether revocation, in the interest of public protection or as a deterrent, was appropriate to impose, when considering the passage of time.

In addition, Ms Clover stressed that licensing conditions, suspensions, or revocations, were not a means to penalise. She referenced a previous case, noting the judge in that case suggested that licensing was not a punitive regime. Criminal and civil penalties were already in place as a consequence of alleged immigration transgressions. The only remit of the licensing regime was remedial, to ensure that licences were being operated within the law and with the four licensing objectives in mind. She stressed to the sub-committee that this should stay within their consideration or it would be ultimately corrected at appeal.

If the result of this review were to be taken to appeal, Ms Clover explained that, it likely wouldn't be until the end of 2021. Because of this, the status quo would have pertained within that space of time, resulting in the decision maker considering the circumstances in the situation that pertained on that day.

Mr Salique, the only PLH in practice, had run the premises since 1998 and had lived in Grimsby since 1979. She stressed that he'd operated a number of restaurants and takeaways in that time and hadn't been subject to review prior to this. She considered Mr Salique to be a pillar of the community and had a reputation that he hoped to preserve, noting the charitable enterprises he had operated. Examples of such were, supply of meals to the Princess Diana of Wales Hospital, he founded the charities 'Community Together', 'Feed the Thousand', and the 'Bangladesh Welfare Association', and he was a contributor to the Mayor's charity annually. Summarising, Ms Clover stressed, that Mr Salique was not someone who could be described as a delinquent or maverick.

Referring to the allegations that led to the site visit in August 2019, referencing Ms Price's comments, Ms Clover stated that they were 'intelligence led'. However, she noted that the information that led to that visit hadn't been disclosed. In addition, Ms Clover noted, the previous visits referenced by the Home Office, hadn't been supported by exact dates or evidence. She pointed out a discrepancy within the documents circulated to the sub-committee, one section claimed alleged arrests took place in 2012 and 2015, while a different section claimed both alleged arrests took place in 2015. Any evidence of previous visits, Ms Clover felt, was significantly deficient. She invited the sub-committee to offer little weight to the assertions of previous visits, if however, the sub-committee did decide to admit those previous visits into their consideration, Ms Clover asked them to detail it within their final reasons. In addition, the claim made by the applicant that arrests were made during those previous visits, again, lacked any detail. Ms Clover offered assurances that Mr Salique denied any knowledge of previous arrests. No criminal or civil penalties were evidenced from these alleged visits. She suggested that significant weight was placed on the alleged previous visits by the applicant, but Ms Clover felt, they lacked any substance worth consideration by the sub-committee.

In 2019 Mr Salique was not running the business, in fact the business was under the operation of Mr Shahid, Mr Salique's son. Companies House records supported this. So, although Mr Salique was the freeholder of the property and PLH, Mr Shahid was the day-to-day manager. She referenced a previous case which challenged the notion that if anyone in the licence chain transgressed, the PLH was automatically responsible. That case, she felt, demonstrated categorically that this wasn't true. Ms Clover added that examples of other licensing chains supported the argument that the PLH was so far detached from the day to day running of the business that they couldn't be held automatically responsible for all transgressions. Just because something had gone wrong at the premises, she stressed, did not mean that the PLH knew about it, or, actively encouraged it.

She referenced paragraph 2.1 of the Home Office's written statement, noting that their accusation of 'negligence or wilful blindness' fell short as it failed to provide any evidence of what the PLH could have done in the circumstances. In addition, the same paragraph also stated the 'employer should ascertain what documents they should check before a person is allowed to work', Ms Clover agreed with this. However, as a matter of law, this was the employers responsibility, not the PLH. Ms Clover took objection to the assertion that 'the offence could only be committed with the co-operation of the PLH or his agents', this she felt was categorically incorrect as a legal proposition.

She referenced paragraph 2.3 of the Home Office's written statement, citing the statement 'those engaged in the management of the premises employed illegal workers'. Again, she suggested that this accusation was limited to those in direct management, not necessarily the PLH.

She referenced paragraph 3.4 of the Home Office's written statement, agreeing with the statement that 'employers had a duty to conduct checks to ensure employees and potential employees were not disqualified from working'. However, no reference to the PLH having responsibility for these checks was included.

She referenced paragraph 3.8 of the Home Office's written statement, noting that 'a premises licence holder who had himself, or through his agents, negligently or deliberately' employed members of staff without correct checks, may have been true in this instance, if the PLH was also the employer.

Ms Clover sought to differentiate between the different personalities active within the operation of premises. She felt that the cases presented by the Home Office and Humberside Police, drew in the PLH as accountable for the employer's actions.

She referenced paragraph 3.30 of the Home Office's written statement, which, she felt, highlighted the difficulty in proving the employees offences against the employer, if the potential illegal worker wasn't truthful in their account of themselves.

Ms Clover noted the difference between the name given on one of the alleged illegal workers' submitted passports, compared to the name he was arrested under. She added that the name given on the passport he submitted to the employer; was the name he was actually referred to on the premises. She noted there was a difficulty, acknowledged by the Home Office, when employers were presented with fraudulent information.

The alleged second illegal worker, she claimed was actually visiting a friend in the residential flat above the premises. She referenced the photographs submitted by the PLH, noting that the site layout supported that account, with two doors to the rear, the right-hand door being connected to the flats above and not to the kitchen.

Ms Clover noted that neither of the PLHs were present during the Home Office site visit in 2019.

Mr Shahid's company, 'Spice of Life GY Ltd', was actually the recipient of the civil penalties imposed. Whereas Mr Salique was not directly involved in the allegations made.

Ms Clover suggested that the case presented by the Home Office and Humberside Police suggested that everyone that was involved with the wrong doer was implicated in their conduct. She asked the sub-committee to consider how comfortable they were with the concept that they would be guilty of wrongdoing by association with family or acquaintances.

In conclusion, Ms Clover stressed that Mr Salique denied the allegations presented against him as far as they related to his involvement to the premises, and he denied any involvement in the incident that occurred in 2019. Speculating on the sub-committee's opinions on the conduct of Mr Shahid, Ms Clover reminded them that Mr Shahid wasn't the subject of this review and had received a penalty by other means. Referring to the revised guidance issued under section 182 of the Licensing Act 2003, Ms Clover noted it stated, 'revocation might be seriously considered, even for a first offence, if the premises were being used to further criminal activity.' She considered the alleged incident in 2019, which had already been dealt with by civil penalty, was being elevated to a crime. Referencing a previous case, she stressed the licensing regime didn't elevate civil offences, non-crime, into crime. She suggested that the Home Office and Humberside Police indicated that the alleged conduct at the premises was in fact a crime, which she stated, it wasn't. Finally, she referred again to the section 182 guidance, noting suggestion that revocation would not be appropriate when the pursuer waited 15 months for a licensing review hearing.

Referencing Ms Clover's suggestion that there wasn't any evidence of previous offences between 2015 and 2017, the sub-committee asked her if she agreed that Mr Salique was the director of the company during that time. Ms Clover acknowledged that Mr Salique was a director associated with the company since 1998.

Noting Ms Clover's confirmation that Mr Roper of Tale and Spirit Group Ltd. was currently in charge of the premises, the sub-committee asked if he was to take over the day to day running of the premises subject to the ensuing transfer application. Ms Clover confirmed Mr Roper would be the lease holder and day to day operator. A variation of the designated premises supervisor application had already been accepted, therefore Mr Roper's DPS was already present at the premises. The sub-committee sought clarification that the previous manager, Mr Shahid, would no longer be involved in the running of the premises. Ms Clover confirmed this was correct.

The Chair invited Ms Bradshaw and Ms Price respectively to provide closing statements to the sub-committee, however both were satisfied with the account they had given and chose not to provide any further comments.

The Chair invited Ms Clover to provide a closing statement to the sub-committee.

Ms Clover hoped that she had effectively demonstrated that this was an unusual situation. She wanted to stress that the sub-committee shouldn't want to punish either Mr Salique or Mr Shahid, as a punishment wasn't within their remit. In addition, they should consider the practicality of the situation, given the current pandemic, if the licence were to be revoked, and the impact it would have on an appeal. The sub-committee, she

reminded, had the option to provide comments, conditions, or suspensions to express their evaluation of the review.

The sub-committee withdrew to deliberate. After an interval, they returned to advise of their findings.

The Chair advised that the sub-committee carefully considered all oral and written information submitted by each party and the report provided by Officers. The sub-committee were happy that there should be no slur on the character of Mohammed Salique regarding the illegal working found to be occurring on the premises known as the 'Spice of Life'. However, the sub-committee showed their concern that in appointing his son as manager, Mr Salique as licence holder, should have made regular checks to ensure licensing law was being complied with. Having checked with the authorities, the sub-committee noted that the DPS variation had been successful. Had that have not happened, the sub-committee would have sought to remove Mr Salique as DPS today. Having regard to the time the proceedings had taken, the sub-committee noted that the subject premises were now being operated by Tale and Spirit Group Ltd. and had been since December 2020. The sub-committee hoped that the business would-be run-in accordance with the promotion of the licensing objectives. In order to facilitate this and provide assurance, the sub-committee insisted a number of conditions to be attached to the premises licence. The sub-committee determined that these conditions were both appropriate and proportionate to promote the licensing objectives. The sub-committee also noted that there had been no further suggestions of crime and disorder issues at the premises, or any intelligence to suggest that illegal workers had been employed since the visit to the premises in August 2019.

RESOLVED – The following conditions will be attached to the Premises Licence:

1. The premises licence holder will operate a full Human Resources (HR) management system, where all relevant documents are stored for each individual member of staff.
2. All copies of relevant documents for members of staff will be retained for a period of 24 months post termination of employment, and will be made available to Police, Immigration, or Licensing Officers upon request.
3. The premises licence holder will carry out checks on the Home Office website and verify identification documents, such as right to work, to ensure all new members of staff can be legally employed.
4. No member of staff shall be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

LSC.10 Application to transfer a Premises Licence – “Spice of Life” 8 – 12 Wellowgate

Mrs Richardson-Smith explained the procedure for the hearing and ensured that everyone in attendance had copies of the agenda they required.

The Chair invited Ms Clover to address the sub-committee.

Ms Clover explained that Humberside Police objected to the transfer application off the back of their concerns detailed within the review. Both a transfer, and a DPS application, were applied for, however, Humberside Police only objected to the former. One of Mr Salique's other sons, Mr Jakir, was the DPS operating under Tale and Spirit Group Ltd, as Ms Clover understood, this was the genesis of Humberside Police's concerns. She stressed Mr Jakir was a reputable licensee in his own right and was previously granted licences with no concerns raised. As she noted earlier, the new DPS was already in operation and had been since December 2020, although she added that the transfer of the lease was still ongoing.

Summarising Humberside Police's objection, Ms Clover noted their concern was that insufficient evidence was presented to demonstrate that the applicant was adequately independent from the current operators.

Referencing the sub-committee's previous decision, that ultimately Mr Salique shouldn't be accountable for the conduct of Mr Shahid, Ms Clover assumed, that the sub-committee would remain consistent in not holding Mr Roper accountable for the conduct of either Mr Salique or Mr Shahid.

Ms Clover confirmed Mr Roper would be happy to proceed with the conditions previously imposed by the sub-committee.

The sub-committee were given the opportunity to ask questions of Ms Clover, however, were satisfied with the statement she provided at that time.

The Chair invited Ms Price to address the committee.

She explained that the initial objection raised by Humberside Police was, as Ms Clover suggested, related to the connection between Mr Shahid and Mr Jakir. They worried that the transfer would be in name only and would circumvent the review application previously submitted, subsequently making little difference to the day to day running of the premises. Given the sub-committee's earlier decision, she felt that Humberside Police's concerns may have less relevance to them.

The application to transfer the premises licence was received 16th December 2020 which, Ms Price explained, was two weeks after the

Home Office's application for review. On the same day, an application was received to vary the DPS on the premises. This was queried following apprehensions about the applicant's given address; however, it was confirmed he would be present at the premises. The varying of the DPS was therefore considered acceptable.

Police enquires suggested that Tale and Spirit Group Ltd, was currently the PLH for Arthurs House Ltd, a previous PLH of that premises was The Gin Pink Company Ltd, the director of which was Mr Jakir. She explained Mr Jakir had been the DPS at Arthurs House Ltd. since the application was submitted in 2018.

She reiterated the comments submitted by Mr Somir claiming that he wasn't aware of the application for the licence transfer and hadn't signed any document to that effect. Ms Price suggested the late submission by Mr Somir was a result of a story published in the local media.

Ms Price began to discuss comments submitted by Mr Somir, the other named PLH, however Ms Clover raised objections to the inclusion of Mr Somir's statement due it's lateness and therefore the inability to get corrective evidence in time for the hearing. Ms Price agreed to omit her comments regarding Mr Somir.

The sub-committee were given the opportunity to ask questions of Ms Price, however, were satisfied with the statement she provided at that time.

The Chair invited Ms Clover and Ms Price to provide closing statements to the sub-committee. However, both were satisfied with their account and chose not to provide any further comments.

The sub-committee withdrew to deliberate. After an interval, the sub-committee returned to advise of their findings.

The Chair advised that the sub-committee carefully considered all oral and written information submitted by each party and the report provided by Officers. The sub-committee were happy to approve the transfer of the premises licence as laid out in the application: although pointed out, having given the benefit of the doubt in this decision, they expected to have no further recurrence or breaches of the licensing objectives. The sub-committee reminded everyone that the power of review was available at any time, and further transgression would not be looked upon as favourably by the authorities.

RESOLVED – That the application to transfer the Premises Licence for the premises known as "Spice of Life" 8 – 12 Wellowgate, Grimsby from Mr Mohammed Abdul Salique and Mr Abdul Somir to Tale & Spirit Group Ltd. be approved.

There being no other business, the Chair thanked those in attendance for their contributions and concluded the meeting at 12.42 p.m.