



The Licensing Officer
Licensing Team – Community Services
Maldon District Council
Council Offices
Princes Rd
Maldon
Essex
CM9 5DL

County Licensing Hub
Witham Police Station
PO Box 12306
Newland St
Witham
Essex
CM8 4AS
15/03/2017

LICENSING REVIEW APPLICATIONS

Licensing Act 2003 Sec 51. Essex Police are seeking a licensing review at the following premises:

Please find your copy enclosed.

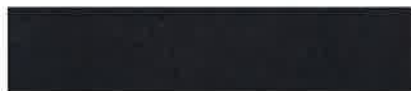
Premises Licence No: 08/0056/LAPRE 003

Country Produce, Highview, Latchington Rd, Cold Norton, Maldon, Essex CM36HR

Essex Police are seeking REVOCATION of these premises licence based on the following licensing objectives:

1 The Prevention of Crime and Disorder

Yours faithfully



6895 Stephen Sparrow
Essex Police County Licensing Officer
Ext 406358

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
You may wish to keep a copy of the completed form for your records.

I STEPHEN SPARROW 42006895 County Licensing Officer Essex Police

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Country Produce Highview Latchington Rd	
Post town Cold Norton, Essex	Post code CM3 6HR

Name of premises licence holder or club holding club premises certificate (if known) Ravinder Singh GROVER

Number of premises licence or club premises certificate (if known) 08/00556/LAPRE 003

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

2) a responsible authority (please complete (C) below)

☒

3) a member of the club to which this application relates (please complete (A) below)

☐

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

1

Please tick ✓ yes

Mr ☐

Mrs ☐

Miss ☐

Ms ☐

Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

☐

Current postal
address if
different from
premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address ESSEX POLICE COUNTY LICENSING HUB WITHAM POLICE STATION NEWLAND STREET WITHAM ESSEX CM8 2AS
Telephone number (if any) 01245 452035 EXT 406358
E-mail address (optional) Licensing.applications@essex.pnn.police.uk

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

- | | |
|-----------------------------------------|---------------------------------|
| 1) the prevention of crime and disorder | Please tick one or more boxes ✓ |
| 2) public safety | x |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | |

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

This premise has been granted a premises licence by Maldon District Council authorising the sale of alcohol off the premises Monday – Saturday 08:00 – 23:00 & Sundays and Good Friday 10:00 – 22:30 Christmas Day 12:00 – 15:00, & 19:00 – 22:30

The premise operates as a general provision store and off licence

The Premise Licence Holder is Ravinder Singh GROVER. The Designated Premises Supervisor is Bilbar SINGH

The current licence was granted by Maldon District Council on 15th October 2008

It is the contention of Essex Police that The Prevention of Crime and Disorder licensing objective has been engaged

Following intelligence held by the Home Office Immigration Service, a Magistrates Court Warrant was obtained on 13th February 2017 and this premise was visited on 15th February 2017 at 16:20hrs by Immigration Officers [REDACTED] and [REDACTED]

[REDACTED] The target of the operation was a Chinese national named [REDACTED]

Upon our arrival a male inside the store spotted the Immigration Officers and made off to the rear of the store. It was established that this male was [REDACTED], an Indian national, born [REDACTED]. [REDACTED] admitted he worked in the store 8 hours per day for £4.50 per hour. [REDACTED] was arrested by I.O [REDACTED] and taken to the custody suite at Chelmsford Police Station and then handed over to [REDACTED] who removed him to the Immigration Holding facility at Gatwick Airport. See Appendix A witness statement of I.O [REDACTED]

It was established that Another male, [REDACTED], an Indian national, born [REDACTED] was also present, worked at the store for one year. [REDACTED] was told to return to his temporary release address in Brighton. [REDACTED] packed his case and left the store. This male was added to the notice of potential liability.
See Appendix B witness statement of IO [REDACTED]

Essex Police County Licensing Officers [REDACTED] and [REDACTED] accompanied Immigration Officers to carry out a routine licensing check. No licensing issues were found but it was noted that the DPS Bilbar SINGH was not present at the time of the visit.

SEC 182 HOME OFFICE GUIDANCE

This review application is respectfully submitted as relevant to the Licensing objective namely the prevention of crime and disorder

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating a premise under the auspices of a Premises Licence granted by the local authority.

Section 11.24 of the Guidance to the Licensing Act states that reviews do not have to be directly linked or connected with the licensable activities at any premise, although in this case the offences are directly linked to the operation of the premises as an off licence selling alcohol and the staff was actively involved in these activities.

Section 11.26 states that it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives.

Section 11.27 states that there is certain criminal activity which should be treated particularly seriously, one of these being knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter.

(It is pertinent to note that the previous guidance issued under s.182 in October 2011 did not include this offence in paragraph 11.29. This indicates the offence has now become a particular concern.)

Section 11.28 states that *'where 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.'*

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

Appendix A: Statement of Immigration Officer [REDACTED]

Appendix B: Statement of Immigration Officer [REDACTED]

Appendix C: Case Citation East Lindsey District Council v Abu Hanif

Appendix D: Potential Criminal Offences

Appendix E: Desired Outcomes

ESSEX POLICE FORCE OBJECTIVES

Currently Essex Police Force Objectives include: - Human Trafficking and Modern Day Slavery. It is felt that the employment of illegal workers in the UK infringes both of these Force objectives by encouraging unscrupulous persons to bring illegal workers, who have no employment rights and are often paid below minimum wage rates, into the UK for profit.

Essex Police treat the employment of illegal workers at licensed premises very seriously and is unacceptable. Positive action will be taken against those unscrupulous licensees who choose to engage in this practice.

CASE CITATION

I wish to cite the case East Lindsey District Council v Abu Hanif (See Appendix C) where a High Court Judge, Mr Justice Jay, certified this case for citation. In this case the judge determined that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged. Therefore the judge upheld East Lindsey District Council appeal and the premises licence was revoked.

Home Office Immigration is concerned with the apprehension, detention and management of persons illegally or unlawfully in the UK and as such their procedures and protocols are not directed towards supporting or promoting the Licensing Act and the licensing objectives. nor are they considered a responsible authority for the purposes of the legislation at this time.

The Immigration, Asylum and Nationality Act 2006 amends immigration, asylum and nationality acts in relation to appeals; entry; deportation and removal of persons. It also introduces legislation on employment of adults subject of immigration control; issue of employment penalty notices; associated employment offences; providing passenger, crew and freight information; a duty to share information; provide disclosure to other agencies and additional powers for searching, fingerprinting, examining and seizure of documents together with connected offences.

However, this particular legislation is ineffective in dealing with the specific issue of this review application and the consideration of this matter at a licensing hearing is therefore wholly appropriate.

Where an employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006.

Similarly, the HMRC may take action as a civil proceedings case and raise a tax debt against the business.

Such an Employer may also potentially breach further regulations in Appendix E attached.

Unfortunately any litigation or civil proceedings in relation to these offences is strictly confidential and

the HMRC will not disclose any details in this respect to a public body, hence the specifics of this incident cannot be disclosed.

This is a delicate and sensitive area and HMRC would be unable to disclose details about its investigations if those details were to be revealed in a public forum like a Hearing as this would break the HMRC/Taxpayer confidentiality guidelines.

HMRC does publish details of serious tax defaulters on their website for the world to see, but the cases have to satisfy strict criteria. It is possible that some of the cases may find their way on to the Serious Defaulters Published list but the timing will rarely suit the timescale of Licensing Hearings. For example – HMRC, & Lincolnshire Police visited a premises in Horncastle with Home Office Immigration in September 2012 and the tax issues arising from that case are only just being brought to a conclusion and being submitted to the HMRC Serious Defaulters team for consideration.

Licence Holders also have a responsibility to ensure the safety of those using their premises (Guidance to Licensing Act 2003 section 2.8).

There are obvious concerns in relation to public safety as to the competency and training of these staff with respect to matters of food preparation and levels of personal hygiene, even though this may be covered by other legislation.

It should be quite apparent that there are potentially numerous criminal offences which may apply to the employment of illegal workers at this particular premise. See Appendix D

Disproportionate weight should not be placed upon whether there is sufficient evidence to determine whether the Licence Holder knowingly employed illegal workers as being the only relevant crime to this review.

The individuals working illegally are committing criminal acts in their own right, irrespective of whether the employer is aware or not.

Illegal working has harmful social and economic effects on the UK; It undercuts British businesses and their workers that stay within the Law and exploits migrant workers. As long as there are opportunities for illegal working the UK will be an attractive place for illegal migrants. This why it is imperative to put a stop to employers breaking the law by taking tough and robust action against those who do so.

There is evidence that some workers employed illegally are paid less than the minimum wage, do not pay tax and may be doing dangerous work that breaks health and safety regulations. Employers who use illegal workers may do so because they want to avoid providing minimum standards, such as the National Minimum Wage and paid holidays. This is harmful to the workers involved and enables dishonest employers to gain an unfair advantage over competitors who operate within the law.

There can be no doubt that the premises licence granted by the authority, offers the provision of licensable activities to be conducted at this venue and that employing illegal workers to facilitate this activity is to the employers financial benefit and to the detriment of law abiding competitors.

It is also obvious that illegal workers are prone to exploitation by their employers in that;

Illegal workers are unable to declare themselves to the authorities to claim any sort of financial support or benefits as this would render them liable to detention, and consequently they are more than likely poorly paid for the hours they are required to work and are not subject to the benefit of a minimum wage or restricted hours as prescribed in law.

They are not provided in most cases with anything other than the most basic of living accommodation nor are they afforded the benefit of the protections offered by UK employment legislation.

Illegal Working in the United Kingdom and Essex is not merely a result of chance happening and should be considered in its true context.

Illegal workers are by nature transient and do not tend to remain in any location for any length of time in order to reduce their chances of detection.

They do not put their name to any official documents and do not rent, lease or purchase property.

They have no recourse to public funds and live beneath the radar to avoid detection by the Agencies.

In order to do this, there has to be a support network in place or they would all be encountered living in the streets and detected in that manner. The support network is provided in the main but not exclusively by, Organised Crime Groups.

Essex Police have identified that illegal workers tend to be harboured and sheltered either in rudimentary accommodation on site or in property nearby, owned or operated by the Licence Holder or their associates.

These workers are predominantly paid below the minimum wage, if at all, as the employers know the worker cannot complain to any Authority. To this end, they are open to exploitation to the financial benefit of the employer.

Employment at licensed premises can represent the terminal point of organised human trafficking in some instances and in the exploitation of these workers. In other cases, it is the means of resort for persons whose legitimate right to remain in the UK has expired.

Responsible and caring employers do not employ illegal workers and take measures to ensure this. Large and well known branded restaurants' and takeaway operators (McDonalds and KFC for example) are not renowned for being identified as employing illegal workers for this very reason.

It is not credible that employers do not know or suspect that the persons they are employing are not entitled to work. These are not merely cases of mistakes or lack of knowledge but deliberate ignorance or actual knowledge of the fact.

At the very least, the employers should demonstrate responsibility and due diligence in determining that persons they employ are entitled to work under the auspices of a licence granted by the Licensing Authority.

Allowing this premise to continue to operate with the benefits of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of these Immigration and Police visits, thereby undermining the licensing objective for the prevention of crime and disorder.

It is the respectful submission as the representative of the Chief Constable of Essex that it is an **appropriate** step to revoke the premises licence in order to promote the licensing objectives and to act as a deterrent to others. See Appendix E Desired outcomes.

Have you made an application for review relating to the premises before

Please tick ✓ yes

☐

If yes please state the date of that application

Day Month Year

↓	↓	↓	↓	↓	↓	↓	↓
---	---	---	---	---	---	---	---

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

NONE

Please tick ✓ yes


- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate x
- I understand that if I do not comply with the above requirements my application will be rejected x

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date

15-03-2017

Capacity **for and on behalf of Chief Constable of Essex Police**

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

STEPHEN SPARROW
COUNTY LICENSING OFFICER
WITHAM POLICE STATION
NEWLAND STREET

Post town
WITHAM

Post Code
CM8 2AS

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) Licensing.applications@essex.pnn.police.uk

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

RESTRICTED (when completed)

MG 11 (M)

WITNESS STATEMENT**Criminal Procedure Rules, r 27.2: Criminal Justice Act 1967, s.9: Magistrates' Court Act 1980, s.5B**

Statement of

URN:

Age if under 18

Over 18

(if over 18 insert 'over 18') Occupation:

Immigration Officer

This statement (consisting of: 3..... pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature:

IMMIGRATION OFFICE

Date:

MONDAY 20th FEBRUARY 2017

Tick if witness evidence is visually recorded

(supply witness details on rear)

I am an Immigration Officer currently based at the ICE EAST OF ENGLAND SUFFOLK & NORTH EAST ESSEX, CUSTOM HOUSE, VIEWPOINT ROAD, FELIXSTOWE, SUFFOLK, IP11 3RF. Whilst on duty wearing personal protective equipment clearly identifying myself as an Officer of Immigration Enforcement, at 1618hrs on WEDNESDAY 15th FEBRUARY 2017 I attended COUNTRY PRODUCE STORE, LATCHINGTON ROAD, COLD NORTON, ESSEX, CM36HR. I approached the premises in the passenger seat of a marked vehicle, as we approached IO [REDACTED] and I witnessed a male wearing a grey top matching the appearance of the persons that were identified on the warrant issued under P17(2) of Schedule 2 to the Immigration Act 1971. As we neared the male suddenly turned away and seemed to make off from the area which I was advised in the operational briefing as the till area, I then made my way into the business at speed in order to encounter the male, I entered and shouted "Stop, Immigration", the male had made it to the rear of the store where I believe he was going to hide and evade detection. I escorted the male back to the till area. I asked the male if he had any ID and he stated that he had some upstairs. I asked if he had had a visa and he stated that it had expired. At 1620hrs I arrested the male under P17(1) of Schedule 2 to the IA1971 as a person liable to be detained under P16 of Schedule 2 to the

Signature:

Signature witnessed by:

2010/11 (1)
1/2/2011

RESTRICTED (when complete)

RESTRICTED (when completed)

Page 2 of 3

Continuation of Statement of

IA1971 on the basis that he had clearly stated to me that his visa had expired. I informed him of the arrest and provided the admin caution and confirmed he understood. He confirmed that he understood English and there was no need for an interpreter. I escorted the male upstairs where we attended his bedroom. He retrieved his Indian passport from a large suitcase, his passport confirmed he was [REDACTED] born [REDACTED] and a national of INDIA. Contained within the passport was a visit visa valid 03032015 – 03092015. There were no other visas or leave to remain. IO [REDACTED] confirmed that there had been no further leave granted to [REDACTED] on Home Office indices. At 1631hrs I asked [REDACTED] a series of questions which I recorded in my personal notebook on pages 69 and 70, I also recorded the answers [REDACTED] gave. To the questions asked he stated that; he had worked at the store for 5 to 6 months, a male named "[REDACTED]" employed him, he did not have to show any documents to obtain the work, he was being paid £4.50 per hour and provided accommodation, he was paid in cash, he didn't work anywhere else, he works 8 hours a day, his job title was a filling/shop assistant, he worked 5 days a week and he was aware he was not permitted to work. Also, [REDACTED] signed a statement in my notebook to the effect: I [REDACTED] am knowingly working when I do not have the right to work, I am working here as a shop filler and earn £4.50 per hour, 8 hours a day, 5 days a week. I read this to him in English and he signed this on page 71 of my PNB. I searched the male under P25(B) of Schedule 2 to the IA1971 as he had already made an attempt to leave the premises, he was evidently nervous and I believed that he may attempt another escape, nothing located. I referred the case to CIO [REDACTED] who authorised the service of administrative papers as a person who has remained in the UK beyond their leave, an offence under Section 24(1)(b)(i) of the Immigration Act 1971. I did not handcuff [REDACTED] as I perceived his behaviour to be compliant at this stage.

Signature:

IO [REDACTED]

Signature witnessed by:

2010/11 (1)
UKBA

RESTRICTED (when complete)

RESTRICTED (when completed)

Page 3 of 3

Continuation of Statement of [REDACTED]

I left the premises at 1705hrs and escorted [REDACTED] to Chelmsford PS and booked him in. Whilst searching the male under P25C I noted that he had a cord in his shorts which were under his trousers, Essex Police authorised the cords to remain on the basis that their policy had changed, the custody officer made a note. I make this statement as soon as practicable with reference to pages 67, 68, 69, 70, 71 of my personal notebook 004469. I complete this statement at 1455hrs on the 20th FEBRUARY 2017 at the Office of ICE East of England – Felixstowe.

Signature:

IO [REDACTED]

Signature witnessed by: [REDACTED]

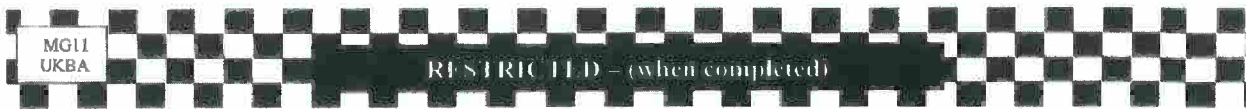
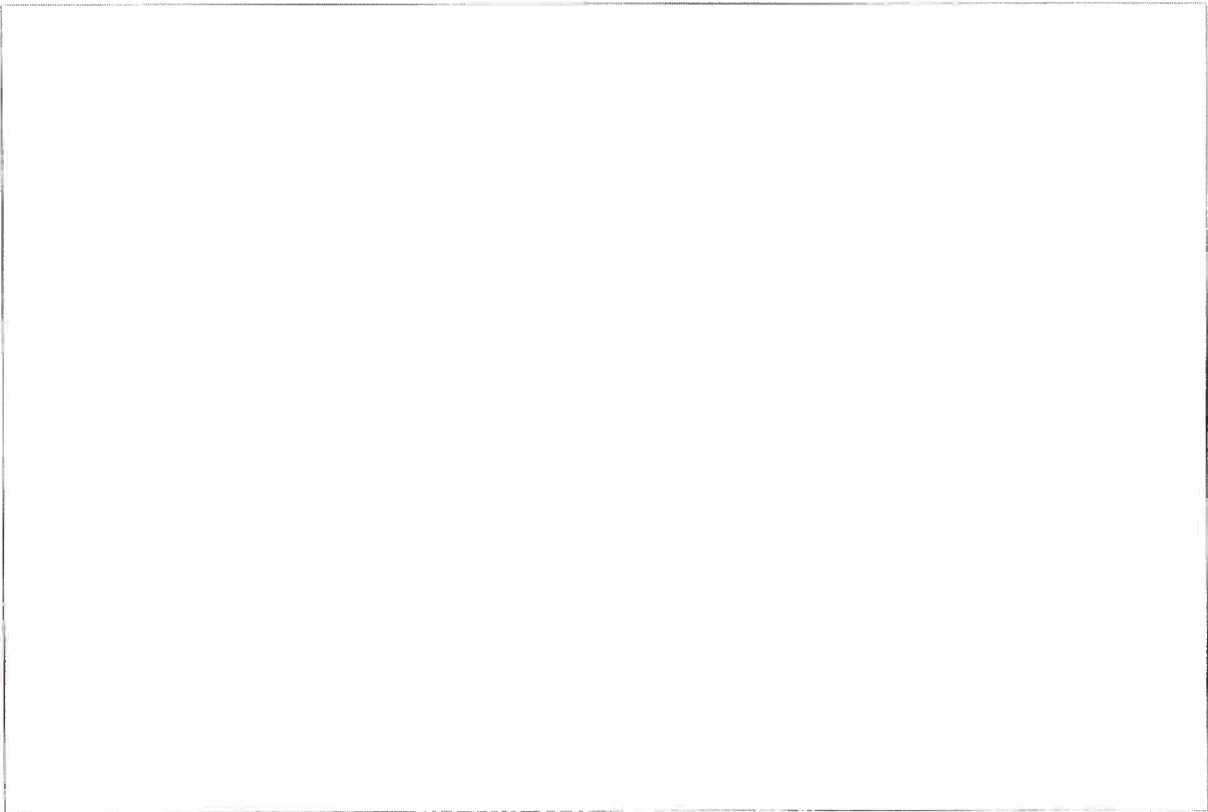
2010/11 (1)
UKBA

RESTRICTED (when complete)



ICE East of England, Suffolk & NE Essex, Custom House, Viewpoint Road, Felixstowe, Suffolk

IP11 3RF



APPENDIX B

MG 11 (2004)

RESTRICTED (when complete)

WITNESS STATEMENT

(CJ Act 1967, s.9 MC Act 1980, ss.5A (3) (a) and 5B; MC Rules 1981, r.70)

URN

--	--	--	--	--

Statement of:

--

Age if under 18 **Over 18**.... (If over 18 insert "over 18") Occupation: Immigration Officer

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature Date: 08/03/2017

Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am an Arrest Trained Immigration Officer currently based at EAST OF ENGLAND ICE, CUSTOMS HOUSE, VIEWPOINT ROAD, FELIXSTOWE, SUFFOLK, IP11 3RF. On THURSDAY 9TH FEBRUARY 2017 I was tasked to attend Country Produce Store, Latchingdon Road, Cold Norton, CM3 6HR. My role on the visit was Arrest Officer. Officer in charge IO

Officers arrived at the premises in marked vehicles at approximately 16:20hrs, as the vehicles came to a stop, I saw an IC4 male smoking a cigarette, he made eye contact with the marked Immigration Vans and immediately ran through the shop towards the rear. I got out of my vehicle as a passenger and made haste for the running male, I shouted for him to stop and he did. The male that ran was escorted back to the front of the store, I encountered three more IC4 males, one of whom was in the Post Office, I told him to get out and open the door to which he did, I then escorted all three males to the front of the store.

All four IC4 males were escorted upstairs along with other officers to the premises that is linked to the store.

I spoke with the following male;

I asked the shop worker, a British national named

I put this to

Signature: Signature Witnessed by:

RESTRICTED (when complete)

Continuation of Statement of: [REDACTED]

Page 2

I asked [REDACTED] if he had a bedroom at the address and he stated he did not.
I asked the target of the visit, [REDACTED] if [REDACTED] lived above the shop, he stated he did and it was the bedroom opposite the kitchen from the front door. I then asked how long [REDACTED] had been working at the shop and he stated he had worked there for at least 1 year. As subject was not immediately removable, I told the subject that he was to leave the premises immediately and return to his Temporary Release address in Brighton.
[REDACTED] packed his bag from the room he had been living in, and exited the shop.
[REDACTED] was added to the notice of potential liability.
I make this statement with my recollection of events and using my original notes made at the scene from Notebook 008770 pages 29 – 32 on the 8th March 2017

Signature: Signature Witnessed by:
2004/05(1)

Appendix C

Neutral Citation Number: [2016] EWHC 1265 (Admin)

CO/345/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 14 April 2016

B e f o r e:

MR JUSTICE JAY

Between:

EAST LINDSEY DISTRICT COUNCIL_

Appellant

v

ABU HANIF

(TRADING AS ZARA'S RESTAURANT AND TAKEAWAY)_

Respondent

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited trading as DTI
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr P Kolvin QC & Mr D Dadds (instructed by David Dadds LLP) appeared on behalf of the
Appellant

The **Respondent** did not appear and was not represented

J U D G M E N T
(Approved)

Crown copyright©

1. MR JUSTICE JAY: This is an appeal by way of case stated from the decision of the Lincoln Magistrates' Court, District Judge Veits, given on 23 June 2015, whereby he allowed an appeal from the revocation of a premises licence by the licensing authority.
2. The appellant, the East Lindsey District Council, is the licensing authority. The Magistrates' Court in the usual way is not a party to these proceedings. The respondent, Mr Abu Hanif, trading as Zara's Restaurant and Takeaway, is the licence holder. He through a licensing consultant has submitted correspondence making various limited points, but indicating that he would not be taking any part in these proceedings.
3. The premises in question are Zara's Restaurant and Takeaway situated in North Summercoates on the Lincolnshire coast. They are licensed to sell alcohol ancillary to the supply of food. The restaurant is owned and managed by the licensee, Mr Hanif. On 29 April 2014, the premises were the subject of a joint visit by the police and immigration officers, and it was discovered that Mr Miah was working in the kitchen as a chef. It was common ground that Mr Miah had no current entitlement to remain in the UK, let alone to work. I was told that he arrived here illegally some years ago. Furthermore, it was also accepted by the respondent that he (i) employed Mr Miah without paperwork showing a right to work in the United Kingdom; (ii) paid Mr Miah cash in hand; (iii) paid Mr Miah less than the minimum wage; (iv) did not keep or maintain PAYE records; (v) purported to deduct tax from Mr Miah's salary; and (vi) did not account to HMRC for the tax deducted.
4. The police then applied for a review of the respondent's licence under section 51 of the Licensing Act 2003 and the matter came before the appellant's subcommittee on 30 June 2014. The subcommittee decided to revoke the respondent's licence. Its reasons were as follows:
5. "The subcommittee were satisfied that Mr Hanif did not take the appropriate checks of staff members having knowledge that there were problems previously at the other premises with overstayers, and that he continued to allow staff to work at Zara's restaurant without making appropriate checks.
6. The subcommittee were satisfied that Mr Hanif had not undertaken the relevant checks to ensure the employee concerned was eligible to work in the United Kingdom. Instead of not allowing employees to work if they had not provided the correct documentation he allowed them to work and paid cash in hand. With all this in mind the subcommittee were satisfied that Mr Hanif had knowingly employed person/s unlawfully in the United Kingdom.

7. The subcommittee considered the evidence by Mr Kheng on behalf of Mr Hanif and the Home Office section 182 Guidance to Licensing Authorities. The subcommittee were of the view that the premises licence should be revoked and that revocation was an appropriate step with a view to promoting the crime prevention licensing objective."
8. The respondent then appealed to the Magistrates' Court. There was a hearing on 27 March 2015, and on 23 June the district judge decided to allow the respondent's appeal. On 1 September 2015, the district judge determined the issue of costs and on 7 January 2016 he stated the case. The appeal to the district judge was de novo, but he accepted that he could only allow the appeal if the subcommittee's decision was "wrong", the burden being on the appellant before him to establish that.
9. Looking now at the stated case, the district judge noted that the respondent had received a civil penalty for employing an illegal worker under section 15 of the Immigration, Asylum and Nationality Act 2006. An immigration officer gave evidence to the effect that although by virtue of section 21 a criminal offence was committed, such proceedings were rarely brought. The district judge also noted that the police and the Council's licensing officer were no longer saying that the respondent was a serial offender, but a redacted report which was placed before the subcommittee still gave the impression that he "was in a much worse position than he actually was". As for the failure to pay the minimum wage, the district judge said this:
 - A. "In his evidence before me Mr Hanif accepted that he had not paid the minimum wage and this in itself can be a criminal offence. I found that this was not the main basis of the subcommittee's decision however and again there was no evidence that he had been reported for that alleged offence. It would appear from their reasons that the subcommittee used the evidence of paying cash in hand as justification for the finding that he knowingly employed Mr Miah. The prosecuting authority however appear to have taken a different view in offering the civil penalty."
10. The district judge's core reasoning was that no crime had been committed. As he put it:
 - A. "It appeared to me that no crime had been committed as a result of the visit to the premises in April of last year. A civil penalty had been imposed rather than

prosecution for the section 21 offence and no other crime had been reported in relation to not paying the minimum wage."

11. In the district judge's view, the crime prevention objective was not engaged.
12. The district judge also criticised the subcommittee for adopting an inconsistent approach because in other similar cases only warnings were issued. Finally, he considered that the subcommittee may have been influenced by comments in the police report, leading them to believe that they were dealing with a serial offender.
13. At the conclusion of the stated case, the district judge posed two questions for my determination. I will address these at the end of my judgment.
14. I was taken by Mr Philip Kolvin QC to various provisions of the Licensing Act 2003 as amended. Under section 4(1) and (2) a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives, which include "the prevention of crime and disorder". The provisions dealing with the review application brought by the police are contained in sections 51 and 52. Under section 52(3), the licensing authority (and on appeal the Magistrates' Court):
 - A. "... must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives."
15. The epithet "appropriate" was introduced by amendment in 2011. Previously the test had been stricter. In my judgment, it imports by necessary implication the concepts of proportionality and relevance.
16. Mr Kolvin submitted that the district judge erred in a number of respects. First, he wrongly held that, given that criminal proceedings were never brought, the crime prevention objective (see section 4(2)) was not engaged. The statute is concerned with the prevention rather than the fact of crime. Secondly, and in any event, the interested party had committed criminal offences in relation to tax evasion, the employment of an illegal worker, and employing an individual at remuneration below the minimum wage. As for the employment of an illegal worker, Mr Kolvin accepted that this requires knowledge on the part of the employer, and he also accepted that it is not altogether clear whether the district judge found as a fact that the respondent possessed the requisite knowledge. However, the core question is the promotion of the licensing objectives, not

the fact of anterior criminal activity, and in this regard a deterrence approach is appropriate.

17. Thirdly, Mr Kolvin submitted that there was no evidence of an inconsistent approach by the subcommittee in giving warnings in some cases because all cases turn on their own facts. Finally, Mr Kolvin submitted that there was no basis for the district judge's conclusion that the subcommittee may have been influenced by a suggestion that the respondent was a serial offender.
18. I accept Mr Kolvin's submissions. In my view the district judge clearly erred. The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. The district judge's erroneous analysis of the law precluded any proper consideration of that issue. In any event, I agree with Mr Kolvin that criminal convictions are not required.
19. To the extent that the analysis must be retrospective, the issue is whether, in the opinion of the relevant court seized of the appeal, criminal offences have been committed. In the instant case they clearly had been: in relation to tax evasion (see the common law offence of cheating the Revenue and the offence of fraudulent evasion of tax contrary to section 106A of the Taxes and Management Act 1970); and the employment of Mr Miah at remuneration below the minimum wage (see section 31 of the National Minimum Wage Act 1998). Moreover, given the evidence that Mr Miah never provided the relevant paperwork, notwithstanding apparent requests, the obvious inference to be drawn is that the respondent well knew that he could not, and that no tax code and National Insurance number had been issued. The corollary inference in my judgment is that the respondent well knew that Mr Miah could not provide the relevant paperwork because he was here illegally.
20. I also accept Mr Kolvin's submission that each case must turn on its own facts. As a matter of law, unless it could be said that some sort of estoppel or related abuse of process arose in the light of warnings given in other cases, the alleged inconsistent approach led nowhere. In my judgment, it could not be so said.
21. Finally, I agree with Mr Kolvin that there is nothing in the point that the subcommittee could have been misled about the interested party being a serial offender. The point that

the subcommittee was making was the fact that the respondent had worked at premises where illegal workers were also employed meant that he should have been vigilant to the issue.

22. Thus the answer to the district judge's two questions are as follows:

A. Q. "Was I correct to conclude that the crime prevention objective was not engaged as no crimes had been proceeded with, the appellant only receiving a civil penalty?"

B. No.

C. Q. "Was I correct in concluding that the respondent had been inconsistent in similar decisions in not revoking the licence [sic]?"

D. No.

23. Having identified errors of law in the district judge's decision, the next issue which arises is whether I should remit this case for determination in the light of my ruling or whether I have sufficient material to decide the issue for myself. I should only adopt the latter course if satisfied that the issue is so obvious that no useful purpose would be served by remission. I am so satisfied. Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked. Another way of putting the matter is that the district judge had no proper basis for overturning the subcommittee's assessment of the merits.

24. It follows in my judgment that the only conclusion open to the district judge in the present case was to uphold the revocation of the respondent's licence. This appeal must be allowed and the respondent's licence must be revoked.

25. MR KOLVIN: My Lord, I'm very grateful. Can I deal with the question of costs, both here and below.

26. MR JUSTICE JAY: Yes.

27. MR KOLVIN: Should I start with here.

28. MR JUSTICE JAY: Yes.

29. MR KOLVIN: My Lord, we would ask for the costs before this court. I just want to pray in aid four very brief points. The first is the result. The second is that the district judge's approach was expressly urged on him by the respondent's legal team. Thirdly, that the respondent was expressly urged to concede this appeal to stop costs running, he was given that opportunity at pages 42 and 43 of the bundle. Fourthly, perhaps a little bit tugging at the heart strings, but there's no reason why the Council Tax payers of East Lindsey should bear the cost of establishing what has been established in this court. So we would ask for the costs up here.

30. There is a schedule and the schedule has been served upon Mr Hanif by letter dated 16 March of 2016. I don't know whether the schedule has found its way to my Lord, if not I can hand up a copy.

31. MR JUSTICE JAY: It has.

32. MR KOLVIN: It has. My Lord, I can see that VAT has been added on. It doesn't need to be because of course the Council can retrieve the VAT, so my application is for £16,185. I know there's not a lot of explanation around my fee, but it was taken on a single fee for all work involved in relation to the case stated; advice, the skeleton argument and attendance today, so it's one single --

33. MR JUSTICE JAY: What about your junior's fees?

34. MR KOLVIN: My learned junior is also my instructing solicitor, he wears two hats.

35. MR JUSTICE JAY: I see.

36. MR KOLVIN: He has his own firm which is Dadds LLP, and he is also a member of the bar, so although he has appeared as my junior, his fee is wrapped up in the solicitors' fees set out in the schedule.

37. MR JUSTICE JAY: Okay. What about the costs below?

38. MR KOLVIN: My Lord, I'm just trying to ascertain what the position is.

39. MR JUSTICE JAY: I thought there was no order for costs below.

40. MR KOLVIN: There was no order for costs below, that was on the basis that the appeal had been allowed. The situation in relation to costs of licensing appeals are set out in section 181 of the Act, which enables the court to make such order as it thinks fit. Normally when appeals are dismissed there is no real question about it, costs follow the event. When appeals are allowed, some further considerations come into play, which are expressed by the Master of the Rolls in a case which you may have come across called City of Bradford v Booth, which is the case where the Master of the Rolls said that local authorities shouldn't be put off from trying to make honest and reasonable decisions in the public interest. And so one has to take account additionally of the means of the parties and their conduct in relation to the dispute, but in this case of course the appeal has now been dismissed, and so we would say that the ordinary rule is that the costs should follow the event, the appeal having failed. I'm just trying to ascertain whether schedules were ever served below, in the light of the way the case came out. (Pause)

41. My Lord, I'm really sorry that we don't actually have the schedule here, apparently it was £15,000. If you were minded to order costs below the options are either I suppose to wait and we will have the thing emailed up, or to say, "Look, it was below, it's a little bit more complex, they should be assessed if not agreed."

42. MR JUSTICE JAY: This is going to wipe him out, isn't it?

43. MR KOLVIN: Well he has already said, I have to say, I'm just telling you frankly what I've been told this morning, that when the bundles and the schedules were served on him, he had clearly read them, but he said, "If you win in the High Court and get costs against me, then I'm just going to declare myself bankrupt." So there may well be a bit of football(?) about this, but nonetheless it was his appeal, his team raised a point which in retrospect was very surprising, and caused an awful lot of costs to be incurred.

44. MR JUSTICE JAY: Yes. Well I am going to assess the costs here in the round figure of £15,000.

45. MR KOLVIN: Thank you.

46. MR JUSTICE JAY: If there was a schedule, which you tell me there was, below, it is proportionate that I assess those costs rather than put you to the trouble of a detailed assessment, so if you could have that emailed to my clerk in due course, I will assess the costs below.

47. MR KOLVIN: Thank you, my Lord.

48. MR JUSTICE JAY: On the basis of that schedule.

49. MR KOLVIN: We're not trying to be too ambitious, but we would like to see what we can --

50. MR JUSTICE JAY: I'll take a broad brush approach to that.

51. MR KOLVIN: Thank you.

52. My Lord, the only other thing to mention is that this isn't the only case which is kicking around the east of England where licensing subcommittees are being urged to take no action because there has been no prosecution in these immigration cases. Although I appreciate that this is hardly stellar law making, it's an application of pretty well established legal principles to the facts, I'm asking whether my Lord would be minded to certify this so that we can adduce the authority in other cases, because it's a clear statement of the law that there doesn't need to have been a prosecution. So with the practice direction in mind, would my Lord be minded to --

53. MR JUSTICE JAY: Just remind me of the practice direction.

54. MR KOLVIN: Yes, can I hand it up?

55. MR JUSTICE JAY: Yes. (Handed)

56. MR KOLVIN: If Mr Hanif had come I wouldn't need to make the application. It's paragraph 6.1. The judgment has to clearly indicate that it purports to establish a new principle or extends the present law and that has to take the form of an express statement to that effect, and then 6.2 says what categories of judgment we're dealing with, which include applications attended by one party only.

57. So that's the situation we're in. In reality these judgments get around anyway, because we're dealing with administrative tribunals and not courts, but sometimes the point is taken, "Ah yes, but the court didn't certify".

58. MR JUSTICE JAY: But where's the new principle I've established?

59. MR KOLVIN: My Lord, what you have said clearly, which hasn't been said before, by dint of the fact that not many licensing cases reach the lofty heights of this building, is that there does not need to have been a prosecution in order for the crime to have --

60. MR JUSTICE JAY: Oh, I see. Well that's so obvious it almost goes without saying, that's why it hasn't been said before.

61. MR KOLVIN: My Lord, it was obvious to everyone except the district judge, the appellant and other licensees in the east of England.

62. MR JUSTICE JAY: Okay.

63. In terms of the logistics, if you want a copy of the judgment, don't you have to pay for it?

64. MR KOLVIN: We may have to, and we would be obviously very pleased to do so.

65. MR JUSTICE JAY: Because I'm not sure that all judgments are, in the Administrative Court, they're not all transcribed and published.

66. MR KOLVIN: That is correct, and I have no doubt that my client would be -- this isn't a matter about the costs of the judgment.

67. MR JUSTICE JAY: No, fortunately it doesn't cost that much. But I will give the certification. I have never been asked to do so before, I must confess.

68. MR KOLVIN: Yes.

69. MR JUSTICE JAY: Because these cases are referred to almost willy nilly, if they're available on Lawtel or wherever.

70. MR KOLVIN: Yes, they are.

71. MR JUSTICE JAY: Then they're just provided.

72. MR KOLVIN: They get into the textbooks and they --

73. MR JUSTICE JAY: No-one objects.

74. MR KOLVIN: Yes. It has happened once before, in relation to the meaning of the Court of Appeal judgment in Hope and Glory, and Lindblom J, as he then was, was asked repeatedly would he certify in relation to the meaning of Hope and Glory, which is an important test, and he was pretty engaged in the practice direction. But since then that judgment, there's always an argument in court about whether it can be cited or not. The difference between licensing and some other fields of law is that very few cases reach here, so when they do, the judgments of High Court judges are gold dust.

75. MR JUSTICE JAY: Yes, well I'm happy to make the certification.

76. MR KOLVIN: Thank you very much indeed.

77. MR JUSTICE JAY: We wouldn't want this point to be taken again successfully.

78. MR KOLVIN: No.

79. MR JUSTICE JAY: Now as a matter of courtesy, is the judgment, once available, sent to the district judge, or is it something that I should do informally?
80. MR KOLVIN: I don't know, my Lord, what the normal practice is. I don't think that I have previously been on a legal team which has sent judgments, but we're very happy to undertake to do so.
81. MR JUSTICE JAY: Yes, I think if you're going to get a copy, obviously you're going to send it to the respondent --
82. MR KOLVIN: Indeed.
83. MR JUSTICE JAY: -- so he can ingest it. I think you should send it to the district judge, just saying that the judge directed that out of courtesy he should see it.
84. MR KOLVIN: We're very happy to do that. Thank you very much indeed.
85. MR JUSTICE JAY: Thank you very much.

Appendix D

The Income Tax (Pay As You Earn) Regulations 2003, (SI 2003 No. 2682)

Regulations 8, 21 - deduction and repayment of tax under the appropriate code.

- Regulations 22, 23, 28, 29, 31 - calculation and making of deduction or repayment.
- Regulations 9, 46, 47, 48, 49, 58 - employee for whom code not known.
- Regulation 66 - deductions working sheet (DWS).
- Regulations 68, 69 - payment of tax monthly by employer.
- Regulations 70 - payment of tax quarterly by employer.
- Regulation 97 - retention of employer's records.

Social Security Contributions and Benefits Act 1992

- Section 3 and paragraph 2 of Schedule 1 - earnings and earnings periods.
- Section 6 - liability to pay Class 1 NICs.
- Sections 8 & 9 - calculation of primary and secondary Class 1 NICs.
- Paragraph 3 of Schedule 1 - method of paying Class 1 NICs.
- Paragraph 3B of Schedule 1 - transferring secondary NIC liability to an employee.
- Paragraph 6 of Schedule 1 - power to combine collection of NICs with income tax.
- Paragraph 7 & 7A of Schedule 1 - penalties in the case of returns.
- Paragraph 7B & 7BZA of Schedule 1 - collection of NICs otherwise than through the PAYE system.

Social Security (Contributions) Regulations 2001, (SI 2001 No 1004)

- Regulations 2 -31 - assessment of Class 1 NICs.
- Regulation 67 and Schedule 4 - makes provision for Class 1 NICs to be paid, accounted for and recovered in a like manner as PAYE.
- Paragraphs 6 & 7(13) of Schedule 4 - prepare and maintain a DWS.
- Paragraph 7 of Schedule 4 - calculation of Class 1 NICs deductions.
- Paragraph 10 of Schedule 4 - payment of NICs monthly by employer.
- Paragraph 11 of Schedule 4 - payment of NICs quarterly by employer.
- Paragraph 11A of Schedule 4 - payment of NICs in respect of retrospective earnings.
- Paragraph 22 of Schedule 4 - end of year returns.
- Regulation 26 of Schedule 4 - retention of employer's records.

Appendix E

DESIRED OUTCOMES:

The desired outcomes Essex Police are seeking are:

- The REVOCATION of the premises licence: OR
- Suspension of the premises licence for a period determined by the licensing committee

The Maldon Licensing Sub-committee may consider imposing conditions to the premises licence of Country Produce.

Essex Police contention is that conditions are not suitable to be applied to premises licence in the case of the employment of illegal workers.

To assist the sub-committee I will use this example: The following conditions have been determined by a licensing sub-committee at a licensing review of a premise employing an illegal worker in Essex during 2016. Essex Police comments are in ***bold italics***

1. The Premises Licence holder will operate a full digital or paper HR management system where all relevant documents are stored for each individual member of staff. Relevant documents must include the Home Office Right to Work Checklist and other required documents.

This condition is a duplication of existing Immigration Legislation i.e. The Immigration, Asylum and Nationality Act 2006 which clearly states right to work checks must be carried out and recorded

2. The Premises Licence holder will work at the premises will work with an appropriate agency e.g. People Force International and carry out checks on the Home Office website to verify identification, visa and right to work documents

This is surely a natural responsibility of a Premises Licence holder in the promotion of the Crime and Disorder Licensing Objective. Guidance is freely available on the GOV.UK website and should be followed as a matter of course

3. No new member of staff will be able to work at any type premises (including any trial period) unless they have provided satisfactory proof of identification and right to work

This is a duplication of point 1 above, is not relevant and is a lawful requirement of the 2006 Act

4. All documents for members of staff will be retained for a period of 12 months post termination of employment and will be available on the premises at all times to police, immigration or licensing officers upon request

This condition contradicts Home Office Guidance May 2015 published in "An employer's guide to acceptable right to work documents" Page 5 Step 3 Retaining evidence: states that the copies of employees documents should be kept for a two year period after they have stopped working. Licensing conditions should not override government guidance and is an unnecessary duplication