

## **LICENSING SUB-COMMITTEE**

### **20 September 2019**

*Present:-* Councillors Elliott, Harris. Wood.

*Substitutes:-* None

*Also Present:-* Ismet Cam, Premises Licence Holder  
David Dadds, Solicitor for the Premises Licence Holder  
William Moody, Essex Police  
Jack Davis, Chief Immigration Officer  
Rebekah Straughan, Legal Adviser  
Mel Rundle, Safety and Protection Manager  
Sarah White, Licensing Officer  
Richard Clifford, Democratic Services Officer

#### **1. Appointment of Chairman**

*RESOLVED* that Councillor Harris be appointed Chairman for the Sub-Committee meeting.

#### **2. Minutes**

*RESOLVED* that the minutes of the meetings held on 19 August 2019 and 3 September 2019 be confirmed as a correct record.

#### **3. Mirra**

The Sub-Committee considered a report inviting the Sub-Committee to determine an application for the review of the premises licence held by Ismet Cam in respect of Mirra, 98 High Street, CO1 1TH. The application for the review of the premises licence had been made by Essex Police. A hearing for the review had been convened on 19 August 2019, but following an application by the respondent's legal adviser, the hearing had been adjourned.

Essex Police introduced the application for a review of the premises licence. The details were set out in the report before the Sub-Committee and the additional information set out in the Supplementary Information. This demonstrated that the Licensing Objective of the prevention of crime had been undermined in that three persons had been found working illegally on the premises, when an illegal working enforcement visit had been undertaken on 14 June 2019. In addition there was evidence that the illegal workers were not paid the minimum wage. The Home Office Civil Penalty Compliance team had issued a civil penalty of £30,000 in respect of the

three illegal workers on the basis that the correct right to work checks had not been undertaken. In response to members' questions it was confirmed that this was a civil, not a criminal, penalty. Mr Dadds, in questioning the Essex Police and Home Office representatives, sought confirmation that the extent of the non-compliance was a failure to retain a record of the date on which the check was made.

Mr Dadds, on behalf of Mr Cam, argued that the issues for the Sub-Committee to determine were whether the proper right to work checks were undertaken prior to the enforcement visit on 14 June 2019, whether there was a statutory excuse against the imposition of the civil penalty and whether there had been a breach of the licensing objectives. There was clear evidence that the right to work checks had been undertaken before the visit on 14 June. Identification documents for the three illegal workers had been sent to the company accountant on 12 June 2019. Whilst Essex Police had sought to undermine the validity of the letter from the accountant, there had been no attempt to interview the accountant and there was no evidence to suggest that the letter was anything but genuine. It was accepted that the identification produced by illegal workers was not genuine, but the Home Office had accepted this would not have been reasonably apparent to the employer. An appeal had been made to the Home Office on the basis that there was a statutory excuse against the civil penalty. The level of the civil penalty had also been reduced to reflect Mr Cam's active co-operation with the Home Office. Mr Dadds stated that it was his opinion that the circumstances of this case were very different to the East Lindsey District Council vs Abu Hanif case relied upon in the submission from Essex Police.

Mr Dadds asserted this view that the Licensing Objective of the prevention of crime and disorder had not been undermined. Mr Cam had acted with due diligence. No criminal sanction had been imposed, and the civil penalty that had been imposed was being challenged. Mr Cam was now using the Home Office forms for employment checks, but these had added little to his previous practice. If the Sub-Committee were minded to take action, it would be sufficient to impose conditions on the licence that all identification checks should be completed before employment commenced.

Members of the Sub-Committee noted that the identification presented by the employees in question was different to their real names and questioned whether this had raised any concerns for Mr Cam. Mr Dadds confirmed that the identification documents had appeared genuine and Mr Cam had not suspected that these were not their real identities. Essex Police also questioned when the employees were put on the payroll, given the evidence that they had not been paid. Mr Dadds maintained that that as the employees had admitted using fake identification cards, they had little credibility and little weight could be attached to their statements. A member of the Sub-Committee also noted the allegations that that one of employees had claimed that they were paid £6 per hour, cash in hand. Mr Dadds confirmed that all wages were paid through the PAYE payroll.

*RESOLVED* that the premises licence held by Ismet Cam in respect of Mirra, 98 High Street, CO1 1TH be revoked.

## **Reasons for the Determination**

The Sub-Committee noted that the application has been brought by the police on the basis of evidence obtained through the execution of a search warrant.

The Licensing Act 2003 does not require a crime to have been reported, prosecuted or established in court, therefore the Sub Committee does not consider the civil penalty, whether appealed or not, to be relevant to today's decision. The Sub-Committee was not satisfied that adequate identification checks were carried out. The Sub-Committee were not satisfied that the illegal workers were on PAYE or were paid the minimum wage and the respondent did not bring evidence before the Sub Committee to refute the statements made by the detained illegal workers.

The Sub-Committee consider that the maintenance of the Licensing Objective of the prevention of crime has been undermined and for this reason considers that it is necessary to revoke the premise holder's licence. In reaching this decision the Sub-Committee has had regard to the twin considerations of prevention and deterrence.