



Cherwell District Council Responsible Authority representation with regards to the licence review of:

Jaflong Restaurant, 51 Market Square, Bicester, OX26 6AJ

I am Christine Pegler, Lead Licensing Enforcement Officer, employed by Cherwell District Council within the Environmental Health and Licensing Directorate.

As part of my role I am responsible for the Licensing of premises, and have delegated powers, under the Licensing Act 2003.

For the purpose of this licensing review I am representing Cherwell District Council as a responsible Authority, acting independently to other Cherwell District Council Licensing Officers facilitating this licensing review.

The following details outline Cherwell District Council responsible Authority representations with regard to Jaflong Restaurant, Market Square, Bicester:

- On 24/11/2005 the premises licence for Jaflong, Bicester was converted and issued by Cherwell District Council under the Licensing Act 2003. The licence was issued to the licence holder Mr Shakur Ali of Oxford, and the designated premises supervisor for the restaurant was Mr Dillwar Ali, of the same address in Oxford. The licence permitted the sale of alcohol for consumption on the premises. This licence has not been altered since it was first issued in 2005. A copy of the premises licence is attached to this representation as **Appendix a**.
- On 11/10/2019 at 18.40 hours I attended the restaurant with Home Office Border Agency Officers. The Border Agency Officers checked all persons living and working at the premises, while I inspected the premises.
During my inspection I made notes in my pocket note book and took photographs which are attached to this representation as **Appendix b**.
Whilst there I spoke to the member of staff who appeared to be in charge at the time, his name was Mr Dill Ali. Mr Ali advised me that there was no one upstairs, however on inspection of the second floor I found a male in a sat in a corner of a dark room. This male was wearing pyjamas, and there was clothing resembling the waiter's uniform on a side near the male.
On further inspection of the premises I noted that there was:
 - 8 beds on the upper floors of the building.
 - Potential overcrowding, fire and health and safety risks.
 - Fire exits had been blocked with goods, and a handle of a fire door/exit had been removed.
 - An infestation of pigeons in the alley next to the kitchen, and dried pigeon faeces in that alley and covering the kitchen window.
 - Potential environmental health issues with the storage of both raw and cooked foods.
 - Internal alterations to building, specifically a hole had been made in exterior wall in the cellar of the restaurant, and there appeared to be access to another cellar through that hole.

As a result of my findings and having safety concerns for both residents and customers of the restaurant, the details of my inspection was reported to Oxfordshire Fire service, and Cherwell District Council Environmental Health, Housing, and Planning departments.



- The Border Agency detained and removed two males who were seen to be working at the premises and noted three other males at the premises who did not have the right to work in the UK. A copy of the Border Agency de-brief notes, dated 14/10/2019, is attached to this representation as **Appendix c**.
- Following the premises inspection, on the 24/10/2019 I wrote to the licence holder. This letter outlined my findings and reminded the restaurant of their obligation to uphold and promote the licensing objectives. A copy of the letter is attached to this representation as **Appendix d**.
- On 06/11/2019 I received an email from Michelle Frame of the Border Agency. This email outlined the details of a civil penalty fine for £20,000 issued to Jaflong Restaurant. A copy of this email is attached to this representation as **Appendix e**.

In making this representation I would like to draw attention to the following Licensing Act guidance:

Home Office Revised Guidance under Section 182 of the Licensing Act 2003

1.19 While licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation. Legislation which may be relevant includes:

- *The Environmental Protection Act 1990*
- *The Clean Neighbourhoods and Environmental Act 2005*
- *The Regulatory Reform (Fire Safety) Order 2005*
- *The Health and Safety at Work etc. Act 1974*
- *The Equality Act 2010*
- *The Immigration Act 2016*
- *Regulators' Code under the Legislative and Regulatory Reform Act 2006*

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or



requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation.

2.8 A number of matters should be considered in relation to public safety. These may include Fire safety.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These include the use of the licensed premises for employing a person who is disqualified from that work by reason of their immigration status in the UK

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime.

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

Case Law Hanif v East Lindsey 14/04/2016

Licensees who employ illegal workers can have their premises licences revoked, as a recent judgement in the High Court has made clear.

Abu Hanif, trading as Zara's restaurant and takeaway in East Lindsey, Lincolnshire, was found to be employing an illegal worker and after the police required a review of his premises licence, the local authority, East Lindsey District Council, revoked the licence.

His appeal, heard by District Judge Veits, was based on the argument that, since Mr Hanif had not been prosecuted for employing an illegal worker under section 21 Immigration, Asylum and Nationality Act 2006, but had merely been given a civil penalty under section 15 of that legislation, it did not cause concern about crime prevention, one of the key licensing issues.

The appeal established that Mr Hanif had employed the illegal worker without paperwork showing a right to work in the UK, he had paid him cash in hand, he paid him less than the minimum wage, he did not keep or maintain PAYE records and that, while he had deducted tax from the worker's salary, he failed to account to the HMRC for it.

His appeal was allowed but the local authority then took the matter to the High Court, arguing that there could be cause for concern on crime prevention grounds without any crime having been reported, prosecuted or established in a court of law.



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In summing up Mr Justice Jay overturned the decision of the District Judge, saying that where there was evidence of defrauding HMRC, exploitation of vulnerable workers and a failure to pay the minimum wage, then in those circumstances, albeit being dealt with by way of a civil penalty, the crime and disorder licensing objective was clearly engaged. Mr Justice Jay didn't remit the matter back to the authority for a re-hearing but determined on what he had heard that the revocation should stand.

Reflecting the importance of the principle that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged, Mr Justice Jay certified the case as appropriate for citation in future cases under the relevant Practice Direction.

Considering the evidence and information presented it is clear that the licensing objectives have neither been adhered to or promoted by the licensed premises and its licence holder, and as a result they have failed to prevent crime, failed to protect the public and children from harm, and failed to ensure public safety.

In line with the Licensing Act guidance, and case law, the licensing Authority would urge the committee to revoke the licence attached to Jaflong Restaurant, of 51 Market Square, Bicester.

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19/02/2020