

Environmental Health and Licensing



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Mr Shakur Ali
Jaflong Restaurant
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Bicester
OX26 6AJ

*Bodicote House
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Banbury
Oxfordshire
OX15 4AA*

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Our ref Hearing
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5 June 2020

Dear Mr Ali

Premises Licence Review Hearing for Jaflong Restaurant, 51 Market Square, Bicester (PRM0176)

Licensing Sub Committee hearing dated: 5th June 2020

I write to confirm the outcome of the above hearing:

The Licensing Panel has taken into account the Cherwell District Council Statement of Licensing Policy and the Guidance issued under s182 of the Licensing Act 2003.

The Licensing Panel has decided to depart from the Guidance issued under s182 of the Licensing Act 2003:

Paragraph(s): 2.5

Reason(s): It is the view of the sub-committee based on the evidence submitted that in the circumstances associated with this particular premises, poor management competency could give rise to issues of crime and disorder.

Background

The relevant background to the review is detailed in the Licensing Officer's report which is published on the Council's website.

The Hearing

Mr Sands detailed the application from his report. Mr Sands set out the basis of the application to review the premises licence and advised the sub-committee of the steps that could be taken under s.52 Licensing Act 2003. He informed the sub-committee that there was an application to transfer the premises to Mr Dilwar Ali.

The sub-committee heard from Ms Frame in relation to the background and reasons for the request for a review of the premises licence. She stated that she was the officer in charge of the visit to the premises on 19 October 2019. She stated that a person was arrested outside the premises using an administrative power given under section 17(1) of the Immigration Act 1971. She showed Dilwar Ali the warrant to search the premises. The Immigration officers searched the working area of the premises only. The Licensing officer who was present informed her that a man was hiding upstairs and she went upstairs as this was a working area. She saw a man sitting in the dark in clothes that did not fit him. There was a uniform near him but she did not see him working. She said two persons were arrested and five further persons were there who had no right to work. They said that they lived upstairs and as a result for the health and safety of her officers and those detained, she, accompanied by the licensing officer cleared the area of the premises to check that there was no danger to themselves. Out of the seven persons there were five persons who had no right to work there and two of the five persons who were encountered working were put on a referral list for civil penalties. Mr Fender stated that in the review pack it was stated that Mr Ali should carry out right to work checks and he asked Ms Frame if she thought this was a legal requirement or simply advisory. Ms Frame stated that she thought it was a legal requirement. Mr Barker asked Ms Frame what powers of search she had and she stated that the arrests gave her a power of search under s.25A Schedule 2. She stated that they were searching for ID documents and denied that the search was a health and safety sweep. Ms Frame stated that the storeroom upstairs was part of the business area. Ms Frame stated that she conducted the search under section 179(1A) of the Licensing Act 2003 and that as arrests were made she also had a power of search. Ms Frame stated that it was her decision to place two persons on the civil penalties referral list. She stated that a £20,000 civil penalty had been imposed but that could have been reduced to a zero sum if proper documentation had then been provided to the Home Office. The civil penalty had not been paid. When asked why no action had been previously taken against the premises Ms Frame stated that the area had previously been covered by Eaton Hall and in 2016 the area was moved over to Birmingham. There had been a previous visit to the premises.

The sub-committee heard from Christine Pegler representing Cherwell District Council as a Responsible Authority. Ms Pegler confirmed that the premises licence had been granted in 2005 and that the license premises holder was Shakur Ali and the designated premises supervisor was Dilwar Ali.

Ms Pegler referred to pages 131-132 of the report which details the Home office findings and refers to the people who did not have the right to work found at the premises. Pages 135-136 outlines the decision to issue a civil penalty. Pages 121-130 of the report shows the photographs that were taken at the premises. She referred to a letter at pages 133-134 which informed Mr Ali that he is expected to uphold the licensing objectives. Ms Pegler referred to the Hanif v East Lindsay case where illegal workers were paid less than the minimum wage and the licence holder was issued with a civil penalty. In that case the licence was revoked following the issue of a civil penalty. She also said it was not necessary for a prosecution to take place for a licence to be revoked. She reported her findings to the Fire Service, CDC Environmental Health, and Housing and Planning. She stated that the prevention of crime included illegal working in licensed premises and that local authorities should work with Home Office Immigration Enforcement as well as the Police. There is certain criminal activity that may arise with licensed premises which should be treated particularly seriously. These include the use of licensed premises for a person who is disqualified from that work by reason of immigration status in the UK. Ms Pegler stated that she had not returned to the premises since 11 October 2019 and there were no other problems at the premises as far as she was aware. When questioned Ms Pegler stated that on a balance of probabilities there were similarities with today's case and the East Lindsay case. In summing up she considered that revocation of the licence may be appropriate as there was poor management at the premises and a change of roles at the premises may not be an adequate response.

The sub-committee heard from the premise licence holder Mr Shakur Ali's representative Mr Fender. He stated that the purpose of the review was to consider the licensing objectives and what is appropriate. It was not to determine guilt or to punish. The only concern was immigration matters and he referred to an alleged visit by Immigration in 2011. He stated that because the Immigration report was redacted it was very confusing to establish what happened on 11 October 2019. He stated that there was a visit by the Home Office in 2011 but there was no evidence of illegal working. He stated that in 2013 the Home Office stated that there was an illegal worker on the premises but then stated that he was not there. The Home Office found nothing. Mr Fender stated that Mr Ali had been cooperative with the Home Office. He stated that this had been a wake up call for the premises licence holder and that he accepts his shortcomings. In 2018 the premises licence holder had a kidney transplant and had taken his eye off the ball. Mr Fender stated it was because of the premises licence holder's illness that he was transferring the licence to his son Dilwar Ali. He stated that the fire service had no real issues with the premises and nor did the Environmental department.

As to case law Mr Fender stated that all cases should be decided on their own facts. He proposed conditions to be put in place so as to avoid employing illegal workers as far as possible. He stated that the proposed conditions would not duplicate existing legislation and that the proposed conditions were an appropriate response and addressed concerns. He stated that revoking the licence would close the family business and he questioned whether that would be appropriate and proportionate

Mr Dilwar Ali stated that revocation of the licence would be devastating for him and his family and stated that his father was ill. He stated that he would make things better. He stated that throughout his father had controlled the business.

Mr Barker questioned whether the enforcement action taken by the Home Office had been conducted properly.

The Decision

The sub-committee has taken note of all the written representations made in respect of this application to review the premises licence for the premises and has listened carefully to all those who spoke at the hearing.

The sub-committee considered that there had been serious failures at the premises concerning the employment of illegal workers. The sub-committee noted the concerns raised about the legality of the search of the premises but were willing to accept that the Home Office had conducted the search properly. The sub-committee noted the previous visits to the premises in 2011 and 2013 and the allegations of illegal working then. The sub-committee noted that persons at the premises during the October 2019 visit admitted working on the premises. It was noted that Dilwar Ali had been the designated premises supervisor since 2005 and as such must have been aware of the illegal working. His inaction as the designated premises supervisor had been irresponsible. The sub-committee noted the proposed conditions put forward but decided that these were not an adequate response. The sub-committee considers that revocation of the licence is appropriate and proportionate.

The sub-committee revokes the premises licence in order to promote the licensing objective of the prevention of crime and disorder.

A copy of this record of decision will be served on all relevant parties.

Subject to the provisions of s.52(11) and paragraph 9, Part 1, Schedule 5 of the Licensing Act 2003 the parties have a right of appeal to the Magistrates' Court within 21 days of notification of this decision.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Trevor Dixon', with a stylized flourish at the end.

Trevor Dixon
Environmental Health & Licensing Manager