

Decision Notice – Review of Premises Licences

MEMBERS PRESENT:	Councillor J Baugh - Chairman of the Licensing Sub-Committee Councillor H Johnson Councillor Mrs S Wilson Councillor Mrs J Allen (Reserve)
PREMISES:	Cost Cutter 9-11 High Street Halstead Essex CO9 2AA Cross Road Stores 39 Cross Road Witham Essex CM8 2NA
APPLICANT:	Essex Police
PREMISES LICENCE HOLDER	Goldline Fuel Ltd T/A Homeneed Express, 797 Harrow Road, Wembley, HA0 2LP (Cost Cutter, Halstead) Sivakumaran Kumarasamy, 68 Roth Drive, Hutton, Brentwood, Essex, CM13 2UE (Cross Road Stores, Witham)
DATE OF HEARING:	Tuesday 28th November 2017
DATE OF NOTICE:	Friday 1st December 2017

Decision: It is the decision of the Licensing Sub-Committee Hearing held on 28th November 2017 to **modify the conditions** of the **Premises Licences** for the premises **Cost Cutter, 9-11 High Street, Halstead, Essex CO9 2AA and Cross Road Stores, 39 Cross Road, Witham, Essex CM8 2NA** for the promotion of the licensing objective of the prevention of crime and disorder.

Further to Section 52(11)(a) and (b) of the Licensing Act 2003, the decision of the Licensing Sub-Committee does not have effect until the end of the period given for appealing against the decision or if the decision is appealed against, until the appeal is disposed of.

Rights of Appeal are set out at the end of this Decision Notice.

Reasons for Decision:

The Sub-Committee has read the submissions made prior to the Hearing and has listened to the submissions made during the Hearing by Counsel for the Premises Licence Holder and the Applicant, Essex Police.

In reaching this decision, the Sub-Committee has had regard to the Council's own Statement of Licensing Policy together with the Statutory Guidance issued under Section 182 of the Licensing Act 2003 (April 2017), in particular paragraphs 2.6, 11.20 and 11.24 to 11.28, and to the cases of *East Lindsey District Council v Hanif (t/a Zara's Restaurant and Takeaway)* and *R (on the application of Bassetlaw District Council) v Worksop Magistrates' Court*.

The Sub-Committee is mindful that this matter has been considered previously by a Licensing Sub-Committee at a Hearing in March 2017 and that the decisions of that Sub-Committee to revoke the Premises Licences were appealed to the Magistrates' Court. Following discussions between the Appellant (the Premises Licence Holder) and the Respondent (the Council), it was agreed that the matter would be remitted back to the Council for re-determination in accordance with the provisions of the Licensing Act 2003 and a Magistrates Court Order was made to this effect¹.

This Hearing is a fresh Hearing taking into account the original evidence submitted to the review Hearing held in March 2017 and all information submitted up to and including the submissions at the Hearing held today, 28th November 2017. The Sub-Committee considers that the focus of this matter is the Premises Licence Holder's conduct and his management of the premises to ensure that the licensing objective of the prevention of crime and disorder is promoted. The Hearing arises following a visit to the premises on 9th November 2016 by the Home Office Immigration Service, who identified employees who did not have a right to work in accordance with immigration legislation. No representations have been made to the Sub-Committee regarding the premises in respect of the licensing objectives of the protection of children from harm; the prevention of public nuisance; and public safety. Nor were there any other issues raised under the prevention of crime and disorder objective.

Essex Police, as the Responsible Authority, has submitted that they have fundamental issues with the Licence Holder's management arrangements for the premises based upon the evidence provided in November 2016. Essex Police consider that there is no trust in the Premises Licence Holder and that he is not committed to maintaining the licensing objective of the prevention of crime and disorder. The Sub-Committee understands that it is the view of the Applicant that revocation of the Licences is the only step which can be taken due to the seriousness of what occurred in November 2016 and that this would send a strong message to other Premises Licence Holders. In their submission (and in response to questions by Members of the Sub-Committee) the Applicant and their witness from the Home Office Immigration Service advised the Sub-Committee that there have been no further visits to the

¹ Order of the Essex Magistrates Court – 17th August 2017 (Case Number 421700253880 and 421700253503)

premises, or other checks by the Home Office and Essex Police since November 2016. In advising the Sub-Committee, both Authorities have advised that their investigations are intelligence-led and they cannot proactively monitor the premises due to a lack of resources, placing heavy reliance on “trust”, that is trusting that Premises Licence Holders do not commit offences or carry out activities which undermine the licensing objective of the prevention of crime and disorder.

Mr Kumarasamy has previously advised the Sub-Committee that he has 30 years’ experience in the retail convenience store industry with the last 4 ½ years (approximately) being in premises holding premises licences under the Licensing Act 2003. Notwithstanding this experience, it is the Applicant’s view and that of its witness that the licence holder did not and continues not to have proper regard to his responsibilities for ensuring that his employees have the right to work.

Whilst the Sub-Committee is mindful of the submission of the Applicant that they do not have the resources to monitor these premises and that they rely upon intelligence, it must therefore conclude that there have been no further activities at the premises since November 2016 which undermine the licensing objective for the prevention of crime and disorder.

Notwithstanding the time that has passed since the visits in November 2016, the Sub-Committee is concerned that a request for the revocation of the licence has been made, but the Responsible Authority which triggered the review has not continued to monitor the premises in such a way as to provide evidence to support their request having regard to the Licensing Authority’s obligation to make a proportionate evidence-based decision.

The Sub-Committee, whilst mindful of the Statutory Guidance which states that immigration matters should be treated particularly seriously and acknowledging that matters found during the Home Office visit in November 2016 are serious, observes that no evidence has been presented since November 2016 that there has been a repeat of the issues found at that time.

In submission to the Sub-Committee, Counsel for the Premises Licence Holder has advised that, notwithstanding the original immigration matters, the premises have operated in such a way that there has been compliance with the licensing objectives, namely there have been no complaints, or breaches of licence conditions.

Via the submissions of the Licence Holder’s Counsel and their witness from People Force International Limited, evidence has been provided that checks have been carried out on all employees at both premises and that they have the right to work. Also, processes have been put in place to ensure that all future employees are checked prior to engagement and thereafter the status of all employees will be subject to periodic monitoring.

Counsel for the Premises Licence Holder informed the Sub-Committee also that the former employee known as “Joseph” (Mr Sagada Prabakara Joseph) has been the subject of a successful immigration appeal and he is now working elsewhere in the area.

Furthermore, whilst acknowledging the seriousness of the immigration offences, Counsel also reminded the Sub-Committee that without a premises licence the premises could still operate as convenience stores. The Sub-Committee acknowledges that a revocation would not be an absolute deterrent to employing illegal workers as there is no power of closure of the shops attached to revocation of the premises licences.

Whilst the Sub-Committee acknowledges that the Premises Licence Holder and the former DPS did not carry out employment checks correctly, including requiring the production of necessary documentation to prove that staff had the right to work, the Sub-Committee is persuaded that sufficient checks have now been implemented with the engagement of People Force International Limited and their procedures.

Also, since the Home Office Immigration Service's visit in November 2016 there has been a change of Designated Premises Supervisor (DPS) for both premises. On 28th June 2017, the DPS for Cost Cutter changed to Pirathas Selvarajah and on 14th September 2017, the DPS for Cross Road Stores changed to Susan Jeffery. In light of these changes, the Sub-Committee does not consider that removing the DPS is an option which it can exercise as these individuals were not the DPS at the time of the Home Office Immigration Service's visit.

The Sub-Committee is mindful of the Statutory Guidance contained within paragraph 11.26, that its duty is to take steps with a view to promoting the licensing objectives in the interests of the wider community and not those of an individual licence holder. Whilst the Sub-Committee acknowledges the Applicant's contention that it is in the public interest to revoke the premises licences due to the employment of illegal workers; the associated harm to them; and its effect on legitimate businesses; people seeking employment; and the generation of income for the Inland Revenue, it is not persuaded by this argument as revocation of the premises licence would not be an absolute deterrent, as previously stated.

Having regard to paragraphs 2.6 and 11.20 of the Statutory Guidance, the Sub-Committee is satisfied that the addition of the conditions submitted by the Premises Licence Holder prior to the Hearing (as set out below Nos. (1) to (4)) and the following condition offered during the Hearing would be an appropriate and proportionate response to address the concerns that the Applicant continues to have in respect of the Premises Licence Holder and in order to promote the licensing objective:

Condition

That an independent contractor is appointed to carry out random unannounced periodic compliance audits of staff employment records and checks as required by conditions (1) to (4) set out below. The results of the compliance audits are to be provided to the Police, the Immigration Service and the Licensing Authority. The appointment of the contractor is to be made within two months of this Decision Notice.

- 1) The Premises Licence Holder will operate a full human resources management system where all relevant documents are stored for each individual member of staff.
- 2) All 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 on request.
- 3) The Premises Licence Holder will work with People Force International Limited (or any other similar agency) to carry out checks on the Home Office website and verify identification documents such as visas and right to work documents to ensure that all new members of staff can be legally employed.
- 4) No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

End of Reasons for Decision.

Right of Appeal

If you wish to appeal against the Council's decision you must do so in writing within 21 days of being notified of the Council's decision to the Magistrates' Court. A fee must be paid to the Magistrates' Court and your application should be sent to the

Chelmsford Magistrates' Court
Court Administration Centre
P.O. Box 10754
Chelmsford
Essex
CM1 9PZ

Telephone: 01245 313300.

Email - enquires: esosprey@hmcts.gsi.gov.uk

For further guidance on Appeals to the Magistrates' Court, please contact the Magistrates Court or seek independent legal advice.