

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE  
HELD ON WEDNESDAY, 2 DECEMBER 2015**

**COUNCILLORS**

**PRESENT** (Chair) Chris Bond, Vicki Pite and Jim Steven

**ABSENT**

**OFFICERS:** Ellie Green (Principal Licensing Officer), Charlotte Palmer (Licensing Enforcement Officer), PC Martyn Fisher (Metropolitan Police Licensing Officer), Catriona McFarlane (Legal Services Representative), Jane Creer (Democratic Services)

**Also Attending:** Mr Miah, Barrister, Great James Street Chambers (on behalf of Tandoori Nights)  
Mr Shahzad Karim (Director of Pennycraft Properties Ltd, Premises Licence Holder)  
Mr Mohammed Rasid (Designated Premises Supervisor, Tandoori Nights) and Mrs Rasid

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**WELCOME AND APOLOGIES FOR ABSENCE**

Councillor Bond (Chair) welcomed all those present and explained the order of the meeting.

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**DECLARATION OF INTERESTS**

NOTED that there were no declarations of interest in respect of items on the agenda.

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**TANDOORI NIGHTS, 27 STATION PARADE, COCKFOSTERS ROAD, BARNET, EN4 0DW (REPORT NO. 129)**

RECEIVED the application made by the Licensing Authority for a review of the Premises Licence held by Pennycraft Properties Ltd at the premises known as and situated at Tandoori Nights, 27 Station Parade, Cockfosters Road, EN4 0DW.

NOTED

1. The introductory statement of Ellie Green, Principal Licensing Officer, including the following points:

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- a. The review application was brought by the Licensing Authority and supported by the Metropolitan Police Service, based on the prevention of crime and disorder licensing objective.
  - b. There were reported immigration issues relating to staff at the premises since 2014.
  - c. The Licensing Authority still considered it appropriate that the licence be revoked in its entirety.
  - d. Mr Shahzad Karim (Director of Pennycraft Properties Ltd, Premises Licence Holder) and Mr Mohammed Rasid (Designated Premises Supervisor (DPS)) and Mrs Rasid were present at the hearing and were represented by Mr Miah, Barrister, Great James Street Chambers.
2. The statement of Ms Charlotte Palmer, Licensing Enforcement Officer, including the following points:
- a. The Licensing Authority was seeking a review on the grounds that staff were employed who were not legally entitled to work in the UK, and this was contrary to the licensing objective of the prevention of crime and disorder.
  - b. The Licensing Authority was seeking a revocation of the premises licence in its entirety.
  - c. There was a significant history of concerns relating to this premises dating back to 2008.
  - d. In 2014 there were five arrests of workers. Details were provided in the witness statement of Abigail Gillett, Immigration Officer (Appendix 6).
  - e. On 17 October 2014 Licensing Enforcement Officers made an intelligence gathering visit with Immigration Officers and when the officers entered the premises four members of staff from the kitchen ran out of the back door of the premises.
  - f. Subsequently, a letter (Appendix 1) was sent to the premises licence holder recommending they submit a minor variation application to strengthen the licence conditions. This gave the opportunity for the licence holder to put processes in place rather than face a review of the licence.
  - g. The letter included a warning that should further similar offences be committed at the premises, the Licensing Authority may take action to have the licence permanently revoked.
  - h. A minor variation was submitted in January 2015 and the details in the letter were not challenged.
  - i. At a visit by Immigration Officers in June 2015 another worker was arrested for working in breach of his Temporary Release conditions. A statement of Kate Gardner, Assistant Immigration Officer, was set out in Appendix 3. This arrest resulted in the issue of a £15,000 fine. The company challenged this decision by objecting but the original penalty was upheld in September 2015.
  - j. In October 2015 the Licensing Authority was informed that the date to lodge an appeal had passed. They had since been advised that the fine was the subject of a challenge, but it was unclear whether the challenge was to the level of the fine or the issuing of it.

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- k. The Licensing Sub-Committee were not being asked to consider any issues that were matters for the court, but to make a decision whether the actions of the premises licence holder undermined the licensing objective of prevention of crime and disorder.
  - l. One of the conditions added to the licence was to be able to produce to a Police Officer, local authority officer or Home Office Immigration Officer, proof of full compliance with the Home Office document 'An employer's guide to right to work checks'. This proof to be produced within 24 hours. If the licence holder had been complying with all conditions he would surely have been able to provide proof and the penalty would never have been served. Either there had been a breach of condition, or he knew that the employee was not allowed to work and employed them anyway.
  - m. How to check validity of documents in respect of right to work was set out in the Home Office guidance, with the employers' responsibilities and liabilities for penalties made clear.
  - n. Illegal working had harmful social and economic effects on the UK and exploited migrant workers.
  - o. Despite previous warnings, illegal workers had been discovered at the premises. The Licensing Authority had a lack of confidence in the premises licence holder.
  - p. The Secretary of State advised that employing staff who were not legally entitled to work in the UK should be treated particularly seriously, and that where a licensing authority determined that the crime prevention objective was being undermined, revocation of the licence - even in the first instance - should be seriously considered.
  - q. The prevention of crime and disorder licensing objective had been repeatedly undermined over the past six years.
  - r. The Licensing Authority believed that the only appropriate action now would be to revoke the licence in its entirety.
3. Charlotte Palmer responded to questions including the following:
- a. In response to Mr Miah's queries, she confirmed that there was reference to only one fine. She was also not clear whether the challenge was to the level of the fine or the issuing of it. The only penalty she was aware of was the £15,000 fine, but the statements from the Immigration Service showed that they had serious concerns and had kept returning, and that people had been taken into custody.
  - b. In response to Mr Miah's queries in respect of making a decision while the challenge to the fine was undetermined, Charlotte Palmer maintained that the licensing condition had been breached in that case, as documentary proof had not been provided within 24 hours. If documents had been available, surely the Immigration Service would not have needed to pursue investigations. So there had been either a licensing or an immigration offence.
  - c. In response to further queries, Charlotte Palmer confirmed that she had been told that a challenge had not been received in time, but was aware there were sometimes delays in court, but the court had not provided information to her in advance of this hearing. Mr Miah clarified that the

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challenge had now been listed by the court. The Legal Services representative further advised that the Licensing Sub-Committee may only consider licensing law.

d. Mr Miah asked about the warning letter sent by the Licensing Authority. Charlotte Palmer advised that the licence holder was not required to sign anything, but was asked to submit a minor variation (which they did) to strengthen the conditions and prevent future problems, if the conditions were complied with. The letter did not specifically recommend the seeking of legal advice though this was an option for licence holders at any time. It was not a PACE interview letter. The letter warned of the seriousness of the offence and the potential for the licence to be revoked. Conditions were recommended to try to prevent further issues arising. It was a first chance given to the licence holder to add recommended conditions - this was explained fully in the letter - so they should not find themselves in a similar position again. It was a voluntary decision to apply for the minor variation. If an application was not submitted, the Licensing Authority would have pursued a review of the licence, and a Licensing Sub-Committee may have decided to revoke the licence even in the first instance.

e. Mr Miah queried that it was unreasonable for an employer to be expected to be an expert on rights to work in the UK. Charlotte Palmer clarified that an employer was not expected to be an expert but must undertake appropriate checks themselves. The statement on page 29 referred to a worker's right to work being checked by an agency as a third party, and that was not allowed. If it was now being stated that documents had been checked but it was not realised that the worker was not able to work in the UK then that was a change of story from the licence holder.

f. Mr Miah stated that he had evidence that an appeal was in process and queried whether it was reasonable to hold this hearing without waiting for the outcome from the challenge dealt with in court. Charlotte Palmer clarified that officers were told there was no appeal at the time this review application was submitted. The Legal Services representative advised that this review was brought by the Licensing Authority, legal advice had been sought and it was appropriate to proceed under licensing law. She clarified that the Licensing Authority was represented by Ellie Green and that Charlotte Palmer was representing Trading Standards.

4. The statement of PC Martyn Fisher that the Metropolitan Police Service supported the Licensing Authority's review application and that he had no extra information to add.
5. PC Fisher responded to questions as follows:
  - a. In response to Mr Miah's query he confirmed that the whole representation on pages 71-2 was from the Metropolitan Police Service. In respect of the arrests for immigration offences referred to, it was clarified that those were by the Immigration Service who then pursued their own prosecution, rather than the Police. PC Fisher was not party to the names of all the people arrested.

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- b. Mr Miah questioned evidence for the assertion within the representation that the licensee had continued to employ staff who were not entitled to work in this country. PC Fisher responded that the chain of events suggested that the licensee had knowingly employed workers who were not entitled to work in the UK.
- c. In response to Mr Miah's further queries, PC Fisher confirmed that there had been no other enforcement by the Police, but noted that there had been other actions by the Immigration Service. Details were given in Charlotte Palmer's evidence. The only sanction he was aware of was the fine previously referred to, and he did not know more about the case disposal.
6. The statement of Mr Miah, Barrister, on behalf of the premises licence holder, including the following points:
- a. He had a further brief witness statement, but as it had not been provided five days in advance of the hearing it had not been included in the agenda pack. Mr Rasid would like the information taken into account. The Legal Services representative clarified that the legislation was clear that evidence should be provided five working days in advance of the hearing, and the presumption was that late evidence would not be accepted. If the panel were minded to accept late evidence, the reason should be minuted. The Chair advised that the panel were not minded to accept the late evidence.
- b. He introduced Mr Rasid who confirmed he was the premises licence holder and confirmed that he was still challenging the fine and that a court hearing was set for 10 February 2016. He was challenging the fine in its entirety and the way the penalty was imposed.
- c. In response to questions from Mr Miah, Mr Rasid stated that in 2013 the Immigration Service had imposed a fine of £5,000, which was challenged and a subsequent appeal was granted. The Immigration Authority had to pay his legal expenses and the case was dismissed and no immigration offences were found. He was informed that no action would be taken and as far as he was concerned the case was closed.
- d. Mr Rasid confirmed that he had been running the business since 1988 with no problems. His background was as an underwriter in the insurance industry, including working in Bahrain.
7. Mr Miah and Mr Rasid responded to questions as follows:
- a. Charlotte Palmer asked why four members of staff had run out when officers made their visit in October 2014. It was responded that they were not workers but students from the upstairs flat who came down the stairs and just walked away, and that they were not chased.
- b. Charlotte Palmer asked whether the appeal against the fine was submitted prior to the receipt of the review application from the Licensing Authority, and that it may have been submitted to stall this process. Mr Rasid advised that he went to his solicitors and submitted the challenge immediately. Charlotte Palmer advised that the review was delivered on 3/10/15. Mr Rasid's documents showed the court's acknowledgement of

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receipt of the objection and allocation of a court number was dated 6/10/15.

c. Charlotte Palmer asked for more details about the actual grounds of the appeal. Mr Rasid advised that the restaurant employed Mr Islam through an employment agency on 2/6/15 and his passport was checked and appeared to be genuine. Mr Islam was offered a job on a trial basis for seven days: if he was suitable he would be given a contract of employment. In the meantime it was found that Mr Islam suffered from a skin disease: this was considered a hazard to health and safety and so he was told he would have to leave at the end of the week. On 5/6/15 Immigration officers came and found Mr Islam's passport was not genuine and he had no right to work in the UK. Mr Islam was taken away and released later. It was not reasonably apparent that the passport was not genuine and no blame was laid on the restaurant: it was not possible for them to assess if the passport was genuine as they were not experts.

d. In response to further queries regarding who checked the documents, it was clarified that they were not checked just by the employment agency but by the restaurant management too. The information in the statement of Kate Gardner on page 29 of the agenda was correct in that documentation was checked by the job agency, but that the restaurant took a photo and kept a separate copy of documents in their files, and when they checked the passport they considered it was genuine and offered the work trial.

e. Members expressed ongoing concerns regarding this case and why the Immigration Service proceeded against the restaurant. Mr Karim stated that he was the person interviewed by Kate Gardner in the statement. Photocopied documents were not shown to Immigration officers at the time as they were in the file. They found out the truth about Mr Islam when a finger scan showed that his identity was different from the name told to the restaurant: he had lied. Immigration officers said it was not the restaurant's problem as it was not for them to be able to verify a passport. Mr Miah acknowledged the concerns and that the merits of this was subject to appeal. He had proof from the file that instructions were given to solicitors on 30/9/15, which was before receipt of the review letter from the Licensing Authority. The appeal process had begun before this review and it was unfair to suggest that the review was the trigger. Information given today was not provided earlier as officers did not raise it.

f. Members remained concerned that proof of compliance with licensing condition 6 in respect of provision of documents within 24 hours had not been met. It was advised that the premises had complied with everything they had been asked to provide by Immigration officers. Charlotte Palmer clarified that the premises had provided what was required under immigration law, but not what was required under licensing law.

8. The closing statement of Ellie Green, Principal Licensing Officer, including the following points:
  - a. Having heard all of the representations, the sub-committee must take steps as it considered appropriate for the promotion of the licensing objectives.

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- b. For assistance, she drew attention to relevant guidance issued by the Secretary of State, and the Council's licensing policy, as highlighted on page 3 of the agenda pack.
9. The concluding statement of Ms Charlotte Palmer, Licensing Enforcement Officer, that this premises had been found to be employing staff who were not legally permitted to work in the UK on more than one occasion. The Licensing Authority lacked confidence in the management and recommended that the premises licence be revoked. In circumstances such as these it was expected that revocation of the licence – even in the first instance – should be seriously considered.
10. PC Martyn Fisher on behalf of the Metropolitan Police Service supported the Licensing Authority's recommendation.
11. The concluding statement of Mr Miah, Barrister, on behalf of the premises licence holder, including the following points:
- a. The premises had not been found to be employing illegal staff on any occasion.
  - b. Solicitors had been instructed regarding the appeal against the fine prior to the receipt of this review, which should remove any suspicion. The penalty was under challenge at the county court. The sub-committee did not have the power to judge criminality.
  - c. At the moment there was nothing to say there had been any sort of non-compliance. There had been no Home Office action apart from that under challenge. In terms of acting reasonably, the licence holder stated he was not a forensic expert and had satisfied himself by checking, and had kept a copy of documents.
  - d. The professional background of the licence holder should also be taken into account, and that he had been running this business for 25 years. It may be the case that people were arrested on his premises but that did not suggest he had not done what he was required to do, and his livelihood and goodwill should not be taken away.
  - e. It was now known that the fine was subject to a challenge (and there was nothing to suggest that the stages had not been followed in a timely fashion), and this review should be stayed while that challenge was decided.
  - f. There was nothing to suggest that the Immigration Service did not receive proof within 24 hours and this had not been questioned at this hearing.
  - g. He asked that the reasonableness of the actions of the premises licence holder, family and management be borne in mind, and maybe if the county court decided against them, then it would be open to the Licensing Authority to proceed.

RESOLVED that

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1. In accordance with the principles of Section 100(a) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

The Panel retired, with the legal representative and committee administrator, to consider the application further and then the meeting reconvened in public.

2. The Chairman made the following statement:

“We have read all the information provided and heard the evidence presented today. We have been careful to consider only the licensing issues in this case and not to direct ourselves to any other issues.

We have considered whether we find that the licence holder has failed to promote the licensing objective of the prevention of crime and disorder. We find on balance that we are persuaded by the evidence of the Trading Standards and the Metropolitan Police Service that the licence holder has failed to be diligent in checking the employment status of his staff and complying with the conditions added to his licence voluntarily by minor variation on 26 January 2015.

We were concerned that the licence holder had failed to address the licensing issues and not attempted in any way to show how he was promoting the licensing objectives. We are also mindful of Government Guidance that even in the first instance revocation should be seriously considered.

We are aware that it is not necessary to show a crime has been committed to be satisfied that the prevention of crime and disorder objective has been undermined. On this basis we are minded to take the steps as recommended by Trading Standards and the Metropolitan Police and revoke the licence.”

3. The Licensing Sub-Committee resolved to revoke the licence.