

**LICENSING PANEL
23 APRIL 2018
2.00 - 3.07 PM**



Present:

Councillors Allen (Chairman), Brossard and Ms Gaw

Also in attendance:

Laura Driscoll, Principal Licensing Officer,

Simon Bull, Assistant Borough Solicitor

Lee-Ann Evanson, Home Office Immigration Enforcement Representative

Hannah Stevenson, Clerk

27. Declarations of Interest

There were no declarations of interest.

28. The Procedure for Hearings at Licensing Panels

The procedure for hearings at Licensing Panels was noted by all.

29. Application for review of premises licence for Sandhurst Tandoori, 80 High Street, Sandhurst, GU47 8ED

The Panel carefully considered all the information presented, both written and oral, from the following people:

- the Licensing Officer who outlined the issues;
- the Applicant,
- the Licence Holder

together with reference to the appropriate Licensing objectives, the Council's own Licensing Policy and the Secretary of State's guidance and in particular the guidance issued following the amendments to the Immigration Act 2016, when the Home Office were granted new powers to seek a review of a premises licence in their own right as a Responsible Authority for breaches of the restrictions on employing people subject to immigration control in licensed premises.

At the conclusion of the proceedings all participants present confirmed that they had been given the opportunity to say all they wished to say. The Panel bore in mind the promotion of the four licensing objectives, the relevant objectives in this case being the prevention of Crime and Disorder.

After careful deliberation, the Panel decided that they would remove Mr Miah's as the designated premises supervisor for the Sandhurst Tandoori and also revoke the premises license for Sandhurst Tandoori, High Street, Sandhurst GU47 8ED.

Reasons

To explain the Panel's full reasons it was helpful to set out the central issues in the case. The Home Office sought a review of the licence and a revocation of Mr Miah's DPS status because between November 2013 and November 2017 the Home Office Enforcement Team undertook three separate Immigration visits. On each occasion they found a number of people subject to immigration control who were forbidden to work at the licensed premises in return for wages, support, board or lodgings, which is contrary to the Immigration legislation. On each occasion a fixed penalty notice was issued to the premises and those notices contain total fines outstanding in the sum of £45,000. Mr Miah's argument was that whilst he were the licence holder and the DPS at the premises since 2009 and even though his signature was on all the licence application documentation since 2009, he were only an employed manager and that the owner made all the decisions about who was hired and fired at the business.

The Panel considered all submissions very carefully and they concluded that whilst Mr Miah may not have been responsible for the hiring and firing prior to becoming the owner in January 2018, he would have been aware of the first Immigration visit in 2013. As a responsible DPS it would have been his place to insist that if his name continued to be on the licence, he would discharge the DPS role and general management at the premises. At this point he should have obtained an agreement with the owner that they provide him with evidence that staff had the right paper work to be employed at the premises. The panel gave him the benefit of the doubt in respect of the November 2013 enforcement visit.

The second enforcement visit took place in September 2017. By that time the Immigration legislation had been amended by the 2016 Immigration Act and the Home Office had been granted new powers to seek a review of premises licences where there were people subject to work restrictions under the Immigration legislation working in licensed premises. The Home Office issued a second fixed penalty notice as they found illegal workers at the premises again, where Mr Miah was the DPS and been the manager since 2009. By this time there was clear Government guidance for those holding a personal licence managing licensed premises to have regard in respect of not employing people subject to employment restrictions in a licensed premises. It was Mr Miah's responsibility to be familiar with this guidance as a holder of the personal licence and as the DPS of a licensed premises. However, again you were given a further chance as the Home Office did not seek a review at that point.

There then followed a further enforcement visit in November 2017 where further illegal workers were again found working on the premises and a further fixed penalty notice was issued. There was evidence in the papers that Mr Miah was aware of both enforcement visits in 2017 and took no steps to ensure that people subject to immigration control without permission to work in the UK were not working in the licensed premises that he had managed continuously since 2009.

Whilst the Panel gave Mr Miah the benefit of the doubt in respect of the first enforcement visit, they believe on the balance of probabilities that you would have been aware that the enforcement visit took place as the people disappeared from the premises following the enforcement visit and as manager even if they returned again after the enforcement team left there would have been disruption to the working of the licensed premises on the evening of the visit which would have been drawn to Mr Miah's attention as the manager. In addition Mr Miah's name is on the premises licence as the DPS and the purpose of his name being on the premises licence is that enforcement enquiries are directed to the DPS. The panel found it hard to believe that as the DPS and the manager, that Mr Miah would not be aware that illegal workers were found and removed or that enforcement action took place. A

reasonable holder of the position of DPS on a licensed premises would have taken steps to ensure that people subject to immigration control and a prohibition on working were not working on the licensed premises.

In summary the Panel decided that by removing Mr Miah as the role of designated premises supervisor at the premises and also revoking the premises license for Sandhurst Tandoori, High Street, Sandhurst GU47 8ED that this was the only way to prevent further immigration breaches occurring in the future. The Panel considered whether the decision to remove Mr Miah as DPS and revoke the premises licence was proportionate and concluded that it was the only way of promoting the crime and disorder objective under the Licensing Act for the reasons set out above, namely that there had been serial breaches over 4 years of the crime and disorder objective. It was felt that Mr Miah had been given every chance and every opportunity to comply with the Licensing Act requirements and had failed to do so. Any action short of the action taken by the panel was felt to be unreasonable and would not promote the licensing objective of the avoidance of crime and disorder at the licensed premises.

CHAIRMAN

This page is intentionally left blank