

Licensing Sub Committee Hearing Panel

Minutes of the meeting held on Thursday, 27 September 2018

Present: Councillor Grimshaw – in the Chair

Councillors: Barrett and Hassan

LACHP/18/140. Application for a Review of a Premises Licence for Pearl City Restaurant, 33 George Street, Manchester, M1 4HQ

The history of non-compliance was outlined by the immigration officer.

On the 19/01/2018 a visit was made by immigration following intelligence that the premises Pearl City Restaurant was employing illegal workers. 10 immigration offenders were arrested with 9 been detained. The Committee were advised a civil penalty was issued for the sum of £90,000 for employing illegal workers which still remains outstanding.

On the 13/04/2018 another enforcement visit took place and a female was detained as she was overstaying her visa, however it was not proved that she was actually working at the premises.

On the 04/05/2018 another enforcement visit took place and on this occasion one of the chefs were arrested as an illegal entrant. A further male who had been arrested on 19/01/2018 was sat at a staff table near the kitchen but declared not to be working.

A referral notice was again served and the officer is still awaiting a decision from their civil penalty team whether another civil penalty will be issued.

It was submitted by immigration that the licence holder failed to meet the licensing objective of crime and disorder by allowing illegal working to take place at the premises and therefore requested revocation of the licence.

During questioning at the hearing it was confirmed by immigration that the owner had not been interviewed about the matters. Further it was confirmed by immigration whilst they could have applied for a compliance order from the Magistrates Court, one was not sought as it was not deemed to be 'proportionate' due to the number of illegal worker found at the premise and it was not proportionate "to close the premises down". Further immigration were questioned by the Committee that if they didn't think it was proportionate to close them down previously why are they now asking the committee to close them down by seeking revocation of the licence?

The representative for the Respondent submitted that his client (the owner of the premises) was a man of good character and the premises had never been subject to review proceedings. It was explained to the Committee that the owner did attend the premises daily however there was a general manager called 'Alex' who was in

control. The Committee were advised that the owner was not present during any of the inspections that took place.

It was accepted by the owner that the civil penalty remained unpaid but it was submitted by the Respondents representative that this was civil debt and not a consideration for this Committee.

In regards to the illegal workers it was explained by the Respondent's representative that Chinese New Year took place on 16th February 2018 and during this period a lot of the staff at the restaurant wish to return home so take time off. The company therefore have to use temporary staff during this period and employ such staff from January to cover this period. It was accepted by the Respondent that the necessary checks were not carried out. It was submitted on behalf of the Respondent that the owner knows he cannot risk any of this happening in the future.

In relation to the 04/05/2018 it was submitted that it WAS a porter not a chef found at the premises and he was brought in by one of the chefs to help out. The Committee were advised that going forward this would not be happening again. It was accepted that the owner had not carried out the checks.

It was accepted on behalf of the respondent that his client did fail to meet the licensing objective of crime and disorder however he will not fail to meet it going forward.

The Committee were reminded that there were no other responsible authorities who had made a representation against this premises.

The Respondent's representative submitted that immigration should have provided a warning to the licence holder following the first visit to the premises. Further the Committee were reminded what immigration had said about it not been "proportionate to close the premises down". The Committee were advised that the restaurant is not a viable business without the alcohol licence.

The Respondents suggested to the Committee that they could consider modifying the conditions on the licence in regards to the paperwork which needs to be kept, with a right to inspect such paper work. Further they could consider issuing a warning as per 11.17 of the Section 182 Guidance.

The Committee first of all looked at the section 182 Guidance and considered the following parts:

Section 182 Guidance

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.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;

- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

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.

The Committee considered the evidence put before them and found the employment of illegal workers at a premises as wholly unacceptable and clearly undermines the licensing objective of crime and disorder. In assessing the evidence provided by immigration that 1 x civil penalty has been issued for illegal workers on 19/01/2018 (10 arrests) and on 04/05/2018 further 1x arrest (but at present no enforcement action taking-pending) the Committee noted that the immigration service were not satisfied that it was proportionate to proceed with a closure order/compliance order as it would close the premises. Whilst the test for a licensing Committee on review is different (they have to consider what ‘appropriate’ steps to take) and such steps taken must also be proportionate. The Committee accepted the evidence presented by the Respondent that if the licence were to be revoked that the business would not be able to survive.

The Committee took into consideration the fact that the owner had been in business for 35 years with an unblemished records and there had been no previous review proceedings against this premises. They also noted the circumstances which led to the illegal immigrants been employed at the premises.

The Committee considered all the options available to them and were very close to revoking the licence due to the nature of the activity which had taken place at the premises, however the Committee accepts there has been no further incident since 04/05/2018 and that they were satisfied that the Respondent was now carrying out the necessary checks on workers. The Committee are satisfied that by imposing the conditions attached, the licensing objective of crime and disorder will be upheld going forward and is the appropriate action to take against this premises.

Decision

To modify the conditions of the licence -

1. The premises licence holder must carry out checks relating to the right to work in accordance with the Home Office Guidance- ‘An Employers guide to right to work checks’ dated 29th June 2018 (or any up dated version) in respect of all of the employees that work at the premises;
2. The premises Licence Holder must carry out checks relating to the right to work in accordance with the Home Office Guidance- ‘An Employers guide to right to work checks’ dated 29th June 2018 (or any up dated version) in

respect of any prospective employees before entering into a contract of employment with the prospective employee;-

3. Any copies of documents retained by the Premises Licence Holder as a result of conducting checks relating to the right to work are to be stored securely by the Premises Licence Holder at the premises.
4. The Premises Licence Holder must provide any of the documentation outlined in condition (1), (2) and (3) upon request to any authorised Immigration Officer
5. There be in place by 8th October 2018 a formalised and written operating procedure setting out how the Premises Licence Holder will comply with the checking and recording of the information outlined in condition (1), (2) and (3). This is to be provided to the Interventions and Sanctions Directorate of the Home Office Enforcement and Manchester City Council Licensing Department by 10th October 2018.