

Minutes of the meeting of the **LICENSING SUB-COMMITTEE** held at the Council Offices, Whitfield on Monday, 18 March 2024 at 2.00 pm.

Present:

Sub-Committee:

Chairman: Councillor S B Blair

Councillors: J P Loffman (as substitute for Councillor D G Cronk)
D J Parks

Officers:

Legal Adviser: Principal Lawyer - Litigation and Regulatory

Licensing Officer: Licensing Manager
Licensing Officer

Administrator: Democratic Services Officer

Persons attending in connection with the Hearing

As shown on the Notice of Determination (NOD/2024/0005R).

34 APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor D G Cronk.

35 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that, in accordance with Council Procedure Rule 4, Councillor J P Loffman was appointed substitute for Councillor D G Cronk.

36 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

37 LICENSING ACT 2003 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE FOR FAVORITE CHICKEN & RIBS, 40 PENCESTER ROAD, DOVER

The Sub-Committee considered an application for the review of a Premises Licence in respect of Favorite Chicken & Ribs, 40 Pencester Road, Dover CT16 1BW made under section 51 of the Licensing Act 2003 as requested by K Sooritaarachchi – on behalf of the Home Office Immigration Enforcement, on the grounds that Favorite Chicken & Ribs under the control of N Nallarasa employed illegal workers.

The following documentary evidence and/or other information was taken into account by the Sub-Committee:

- (i) The Licensing Manager's report including, the options available to the Sub-Committee
- (ii) Current Premises Licence for Favorite Chicken & Ribs (appendix A of the agenda)
- (iii) Map of the area (appendix B of the agenda)

- (iv) Review application submitted by Home Office (redacted) and the Licensing Authority had identified persons as Person 1, Person 2 and Person 3 and the previous licence holder (appendix C of the agenda)
- (v) Relevant sections from the Section 182 guidance in relation to illegal working in licensed premises (appendix D of the agenda).

On the basis of the representations of the Responsible Authority (Home Office Immigration Enforcement for the Responsible Authority) and oral and written representations for Favorite Chicken & Ribs, the Sub-Committee found the following facts to be established:

- (i) That under section 51 of the Licensing Act 2003, on 23rd January 2024 K Sooriyaarachchi, on behalf of Home Office Immigration Enforcement as the Responsible Authority, submitted a review application for Favorite Chicken & Ribs for reason of illegal working thereby undermining the licensing objective of preventing crime and disorder.
- (ii) The Premises Licence Holder at the relevant time was N Nallarasa. Following a transfer application on 2nd February 2024 the Premises Licence Holder was T Yogeswaran. There were no objections to the transfer by either the Police or Immigration.
- (iii) The premises had been licensed for late night refreshment since 19th August 2022: Sunday – Wednesday 23:00 – 01:00 hrs, Thursday – Saturday 23:00 – 02:00 hrs.
- (iv) On behalf of the applicant a number of general concerns relating to illegal working were set out including, that the ability to work illegally was key to migration and individuals may take risks to enter the UK; there was a risk of exploitation by employers; the practice can undercut legitimate business; there may be an element of tax evasion; and that the practice may breach the national wage.
- (v) On 15th June 2023 Officers of the South East Immigration Enforcement and Compliance team (ICE) (accompanied by an officer from Dover Licensing) attended Favorite Chicken & Rib and identified 3 persons within the premises:
 - a. Person 1 was cleared by Immigration.
 - b. Checks for Person 2 revealed that their student visa was curtailed in March 2023 and expired in May 2023, as such Person 2 should have left the UK or applied for further leave to remain – records indicated Person 2 was working more than the 20 hours permitted per week.
 - c. Checks for Person 3 revealed that they held a student visa from 29 September 2022 to 22 January 2024, it was noted that because Person 3 had not enrolled for their studies the visa was under consideration for curtailment.

- (vi) Mr Nallarasa confirmed to the officers that he was responsible for hiring staff and acknowledged that the two illegal workers had presented him with documents but he did not conduct any checks on them.
- (vii) A civil penalty of £15,000 was issued and paid in full however, it was stated this was separate and distinct from the licensing regime. Home Office Immigration Enforcement sought the revocation of the premises licence.
- (viii) Prior to the start of the Hearing, written submissions prepared by a licensing consultant for both the previous and current Premises Licence Holders were provided.
- (ix) The submissions stated that the revocation of the licence would not be proportionate and highlighted revocation of the premises licence would stand to have very serious impact not only on Mr Nallarasa who would lose the sale of the business but also Mr and Mrs Yogeswaran who were ready to start a new business venture and were clearly not connected with the incident.
- (x) Condition wording was proposed in the written submissions as an appropriate and proportionate response:
 - No new member of staff will be able to work on the premises (including any trial period) unless they have provided satisfactory proof of identification and right to work documentation.
 - All documents showing the staff members right to work will be retained on the premises for the entire period of their employment and will be made available to the police, immigration service or officer from the licensing authority to inspect at any reasonable time.
- (xi) The applicant and Licensing Manager were given the opportunity to comment on the proposed wording.
- (xii) The applicant questioned the timing of the Premises Licence transfer and the sale of the business. The applicant noted that the submissions on behalf of the previous and current Premises Licence Holders offered a condition to prevent an immigration issue from arising again and whilst this was welcomed by the applicant they questioned whether the licensing objectives would be upheld by the new Premises Licence Holder.
- (xiii) The Sub-Committee sought clarification from Immigration Enforcement as to the delay in submitting the Review. The visit was conducted in June 2023, the application for Review (seeking the most serious action i.e. revocation) was not submitted until January 2024. It was explained that the licensing element of immigration enforcement was a small area of work for the Immigration Enforcement team who covered the whole of England and Wales.
- (xiv) Mrs Yogeswaran informed the Sub-Committee that work had been in progress for some time for the sale / purchase of the business (and it would have a new business name). She had heard about the sale of this business through friends and had not had any prior involvement with it. Mrs Yogeswaran had been unaware of this incident and the first she knew of this matter was when the Review agenda papers arrived.

- (xv) Mrs Yogeswaran explained to the Sub-Committee she had been in business for the last 10 years and she had not had any previous incidents. Mrs Yogeswaran currently lives out of the area but would move closer on the transfer of the business. Mrs Yogeswaran noted the Sub-Committee's emphasis that she was responsible as the Premises Licence Holder even though the sale had not yet completed.

The Sub-Committee had taken into account the following:

- (i) Dover District Council's Licensing Policy
- (ii) The Licensing Act 2003 and in particular the guidance given under Section 182 of the Act
- (iii) Article 6 of the Human Rights Act (Right to a fair trial)
- (iv) Section 17 of the Crime and Disorder Act 1998 (Duty to consider crime and disorder implications)

RESOLVED: In respect of the Premises Licence of Favorite Chicken & Ribs, 40 Pencester Road, Dover CT16 1BW the Sub-Committee has decided to:

- (i) Modify the conditions of the licence as suggested on behalf of the previous and current Premises Licence Holders subject to the following changes (in bold):
 - No new member of staff will be able to work on the premises (including any trial period) unless they have provided satisfactory proof of identification and right to work documentation **and this has been checked / confirmed.**
 - **The Premises Licence Holder is required to undertake right to work checks.**
 - All documents showing the staff members right to work will be retained on the premises for the entire period of their employment and will be made available to the police, immigration service or officer from the licensing authority to inspect **upon reasonable request.**
- (ii) The Sub-Committee delegated authority to the Licensing Manager to finalise the above condition wording.

The meeting ended at 3.25 pm.