



East Cambridgeshire District Council

Minutes of a Meeting of the Licensing (Statutory) Sub Committee

Held at The Grange, Nutholt Lane, Ely, CB7 4EE at 10:00am
on Friday 24 November 2023

Present:

Cllr Charlotte Cane

Cllr Martin Goodearl (substitute for Cllr Lavinia Edwards)

Cllr Keith Horgan

Officers:

Stewart Broome – Senior Licensing Officer

Maggie Camp – Director (Legal Services)

Jane Webb – Senior Democratic Services Officer

Angela Tyrrell – Senior Legal Assistant

In attendance:

Mr Giles - Barrister (Representing Fordham Service Station & Licence Holder)

Mr Vijithran – Designated Services Supervisor - Fordham Service Station

Chief Immigration Officer Rose - Home Office Immigration Enforcement

Karen Wright – ICT Manager

1. Apologies and substitutions

Apologies for absence were received from Cllr Lavinia Edwards, and Cllr Goodearl was attending as a substitute.

2. Declarations of interest

No declarations of interest were made.

3. Application for the review of a premises – Licensing Act 2003 Premises: Londis, 31 Carter Street, Fordham, Ely, Cambs.

The Sub-Committee considered a report, Y94 previously circulated, to determine an application for the review of a premises licence held by ARUN Capital Limited in respect of Londis, 31 Carter Street, Fordham, Ely, Cambs CB7 5NG.

The Senior Licensing Officer explained that this Committee was originally scheduled for Monday 20 November 2023, and this was an adjourned hearing from that date to determine the application. A summary of the premises was provided, and it was highlighted that the convenience store, attached to and

forming part of the Fordham Petrol Service Station, was originally granted a premises licence on 29 September 2005. This licence was transferred to ARUN Capital Ltd on 25 January 2021.

Home Office Immigration Enforcement made an application to review the premises licence on 27 September 2023, under the Prevention of Crime and Disorder licensing objective. The Senior Licensing Officer explained that during the consultation period the Licensing Authority had received no representations from any responsible authorities or only one from other interested parties. This was a letter received in support of the Licence Holder.

Members were reminded that the application should be determined in accordance with promoting the four Licensing Objectives: The Prevention of Crime and Disorder; the Prevention of Public Nuisance; Public Safety; and the Protection of Children from Harm. Members were required to have regard to the Council's Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Licensing Act 2003 when making their decision. Members were provided with the options available to them in determining the premises licence application, together with a summary of the key matters that had been presented to them. The Sub-Committee were asked to ensure that they provided reasons for their decisions and considered their responsibilities under the Human Rights Act 1998 to balance the rights of the applicant and the rights of those who may be affected. Members were able to determine a review application as follows:

- Reject the application (leave the licence as it stood)
- Modify the conditions of the Licence
- Exclude a licensable activity from the scope of a Licence
- Remove a Designated Premises Supervisor from the Licence
- Suspend the Licence, not exceeding a period of three months, or
- Revoke the License in its entirety

However, it must be appropriate to carry out one of the actions in order to promote one or more of the Licensing Objectives and must relate to the evidence presented. If Members were to consider conditions, they must be focused on the matters in control of the Applicant.

The Sub-Committee were informed that in determining the application, Members must consider:

- Article 6, The Right to a Fair Hearing
- Article 8, Respect for a Private and Family Life
- Article 1, First Protocol Peaceful Enjoyment of Possessions
- Article 14, The Right from Freedom of Discrimination

The Senior Licensing Officer ended his report by stating that the cost of the Licensing Hearing was covered by the statutory licence fees that had been paid and any party aggrieved could appeal the Sub-Committee's decision to the Magistrate's Court. The right of appeal was 21 days from the date of notification of the decision, which could be made up to five working days from the date of the hearing.

The Chairman invited questions to be asked of the Senior Licensing Officer.

Cllr Horgan asked if the mandatory conditions, as listed in Appendix 1 of the Officer's report, were applicable to the licence; it was confirmed that these were applicable.

The Chairman invited the applicant, Chief Immigration Officer Rose from the Home Office, to present her case.

Chief Immigration Officer Rose apologised for the Home Office's delay which had resulted in the hearing being reconvened. She highlighted that Immigration Enforcement were intelligence-led and there needed to be significant concerns for any action to be taken. Licensing Reviews were only sought in selected cases where there was heightened concern, as in this case with the increasing prevalence of the use of illegal labour within small, licensed premises across East Anglia, as there had been a number of licensing reviews in Cambridgeshire, Suffolk, and Norfolk over the last three months. There was an added concern which had been raised by the comments of an employee (who had subsequently been arrested) that the individual had worked at the premises for the last eighteen months and had been paid £8 per hour in cash, which was 'off the books' and below the minimum living wage. It was the Home Office's role to bring these concerns to the attention of the Licensing Authority.

Chief Immigration Officer Rose explained that Immigration Enforcement had received an allegation of illegal workers being employed which had resulted in an enforcement visit being made on 25 May 2023. On arrival, there were two members of staff present, one of which was subsequently arrested, he had been seen at the till service counter and had been wearing a shop branded shirt. When interviewed, the member of staff informed Immigration Enforcement that he was a student, living in the UK and records showed he had a valid student visa allowing him to work a maximum of 20 hours a week during term time. He admitted he had been working approximately 30 hours a week for the last eighteen months and paid £8 per hour and had given up his studies with the sole purpose of working in the UK.

Chief Immigration Officer Rose ended her case by stating that the Home Office did not want to be involved in the unnecessary restriction of a genuine community service, however, there were concerns on the way the business was run and there needed to be a significant way to ensure that this would not be repeated and to ensure that other businesses were fully compliant with legislation. The statutory guidance suggested that the revocation of a licence should be considered at a first offence, however, the Home Office accepted that this was a limited breach, and the business had not had a civil penalty imposed, although this was a separate matter and irrelevant as to how the Sub-Committee should consider the licensing objectives. The Home Office suggested that the most serious aspect of the case was not only the employment breach of the immigration rules, but the matter of paying off the books and below the minimum wage. The Sub-Committee might want to consider a revocation of the licence which would send a firm message to the business and other businesses in the area.

The Chairman invited questions to be asked of Chief Immigration Officer Rose.

Cllr Cane asked why the Home Office had decided not to take any further action given their concern over the increasing prevalence of the use of illegal workers across East Anglia. Chief Immigration Officer Rose responded stating she could not answer the question. Cllr Cane also enquired if evidence had been found of other potential illegal workers employed at the premises, the Chief Immigration Officer Rose confirmed she had not attended the visit, but the notes showed that only one person was working illegally on the premises.

Mr Giles, Barrister, asked the following questions:

- Was it correct at the time of the individual's arrest, that there were no restrictions on his right to work in the UK as it was during vacation time. Chief Immigration Officer Rose confirmed that the arrested person, by his own admission, was in the UK to work and his visa was to study in Bournemouth. There was no forthcoming evidence of term time dates for Bournemouth and therefore this could not be verified.
- Could the Home Office confirm that it was from 6 April 2022 that holders of a biometric residence permit could only evidence the right to work using the Home Office online service. Cllr Horgan commented that the answer to this question was within the pack.
- Could the Home Office confirm that every student that arrived in the UK to study was allowed to work a maximum of 20 hours term time and outside of term time, it was unrestricted. (This was not answered.)
- Was it correct that the individual arrested, told the Home Office that he had been working at the premises for 18 months. Chief Immigration Officer Rose confirmed that this was written in the notes from the visit.
- Would the Home Office confirm that in contrast to the 18-month period of employment the individual claimed to have worked, the Londis shop had stated that the individual commenced work in September 2022. Chief Immigration Officer Rose stated she could only confirm what was written in the admission. Cllr Horgan added that the written evidence showed a difference of opinion from the individual and from the follow up questions asked of the management of Fordham Station.
- Could the Home Office confirm that Londis could have avoided a review if it had conducted the proper right to work checks and adhered to the restrictions of the Visa. Chief Immigration Officer Rose stated she was not able to answer the question.

Cllr Horgan asked the following questions:

- Was the other staff member present at the time the visit took place also present at the hearing today. Chief Immigration Officer Rose stated she was not part of the visit but confirmed it was Mr Vijithran.
- Was there any record that the arrested person had been involved in the sale of alcohol or hot/cold beverages at night. Chief Immigration Officer Rose confirmed that timesheets had been taken but these were illegible, and the Home Office did not have the originals.

- Could the Home Office confirm when the records started, was there evidence of hours or days worked and did those dates pre-date 25 September 2022. Chief Immigration Officer Rose confirmed that the timesheets were illegible, and the Home Office were unsure that any evidence was held that showed the worker worked prior to 25 September 2022.
- Had the Home Office attempted to view CCTV footage to check if the individual had worked prior to September 2022; no evidence could be provided.
- Did the Home Office have any evidence to show that the DPS had conducted the proper checks with the education sponsor directly to determine term times or holidays; no evidence could be provided.
- Did the Home Office have any evidence to show that the individual was paid in cash or were checks made with HMRC to look for evidence under a PAYE system; no evidence could be provided.
- Why were the Home Office concerned with the gas cylinders stored upstairs and the alcohol stored on the stairs. Chief Immigration Officer Rose stated she was unsure why but understood that the stairs needed to be clear.
- Had the Home Office's opinion changed since submitting the review and now, the Chief Immigration Officer replied not to her knowledge.
- The Home Office report suggested an offence could only be committed with neglect or co-operation of a premises Licence Holder or its agents to which Chief Immigration Officer Rose answered stating she did not have an opinion and was just following the guidance.
- Were the interview questions asked on Page 29, of the Licence holder; Chief Immigration Officer Rose confirmed that was correct.

The Director (Legal) asked why a review was submitted on 27 September 2023 by the Home Office, when a No Action Notice was issued on 6 September 2023; the Chief Immigration Office Rose stated she could not answer the question.

The Chairman invited Mr Giles, Barrister, to present his case.

The No Action Notice was issued on 6 September 2023 and stated that the individual arrested had no restrictions on his right to work in the UK as it was during his vacation time. The individual concerned had produced a biometric residential permit (BRP), however the Home Office had given advice stating there was a need for the employer to check the student's term and vacation dates from the student's education sponsor. Unfortunately, confirmation was not sought, and his client had accepted that this was remiss of them. The Home Office had also advised that the Code of Practice on preventing illegal working stated that holders of a BRP could only be evidenced using the Home Office online service; therefore, a physical BRP could not be accepted after 6 April 2022. His client had stated the individual started work in September 2022 and they had only carried out physical checks on the BRP and not the online check as required, yet the Code of Practice was very explicit about this requirement.

The individual started work in September 2022 and was not an illegal worker, he worked legally and within the termtime restriction of 20 hours and outside termtime with no restriction.

The Home Office's decision to take no action in relation to the alleged illegal worker was taken in June 2023 and yet the Home Office application to review the licence referred to "a referral being made to the Home Office Civil Compliance Team to consider a penalty of £20,000", yet by the time this was submitted, it had already been decided that the penalty would not be pursued. However, Mr Giles explained that his client took this matter seriously, and realised what they had and had not done. The Manager accepted the three-stage check was carried out but only on the physical documents and a mistake was made by recording the individual working 30 hours per week during term time. He claimed this was an oversight and he had been given a warning by the Managing Director and apologised for the mistakes.

Mr Giles summed up stating these mistakes had been an oversight and only one of the licensing objectives had been engaged (Prevention of Crime), yet none of the more serious aspects of the licensing policy considerations arose in this situation, it was an isolated incident on an unblemished record. He therefore asked the Sub-Committee to take no action in this regard.

The Chairman invited questions to be asked of Mr Giles, Barrister.

Cllr Goodearl asked:

- Did his client knowingly accept that the student would have worked more hours than authorised during termtime/eight months. Mr Giles confirmed that his client acknowledged, regrettably, that some of the work would have been during term time and the student would have worked more than 20 hours.
- Who authorised the employment and the cash payments. Mr Vijithran authorised the employment; it was correct that the individual was paid in cash, however the suggestion that the individual was working off the books was not accepted.
- Was Arun Capital Ltd aware of the cash payments being made to the employee, Mr Giles confirmed that they were aware.
- How were the cash payments documented and PAYE/NI paid. Mr Vijithran explained that when the individual joined in September, they also charged him £300 per month rent as he lived upstairs, which was taken directly from his wages before being paid. In May, the employee had still not provided a NI number and had informed him there had been a delay from HMRC. Therefore, his earnings were recorded with the intention of submitting the NI payments once a NI Number was received.
- Mr Vijithran explained that he had not known he could not employ the individual with no NI Number, he thought he could register him to work whilst he applied for his NI Number.

Cllr Cane asked the following questions:

- Were you deducting tax and forwarding this payment onto HMRC; Mr Vijithran stated that it was not necessary as the individual would have earned under the £12,000 tax bracket.
- Did the Company not realise that tax should have been deducted from the employee until a code was received from HMRC; Mr Vijithran responded stating he had estimated the amount of tax needed and reserved it.
- The employee was entitled to be paid the minimum wage; Mr Vijithran explained that £8 was not his hourly rate as he had already taken the tax off.
- What record did the employee receive to show how much he had been paid; Mr Vijithran stated that he had explained to the employee that £8 was the net wage and the remainder would be worked out once his NI number had been received.
- Why were the gas bottles being stored upstairs where the employee was living; Mr Vijithran explained these were empty cylinders and were stored temporarily upstairs as they had no room at the garage.
- How was stock control managed as there was alcohol stored on the stairs; Mr Vijithran explained there was no storeroom and they had bought in bulk when items were on promotion. They had since learnt from this mistake and no longer bulk bought promotional items, so they no longer stored stock on the stairs.
- How was stock control managed if there was not a secure storeroom; Mr Vijithran explained the shop had an automatic electronic stock control system.

The Legal (Director) enquired as to why the employee was paid in cash. Mr Vijithran explained this occurred due to the bank charging 90p per £100 paid into the bank account, therefore they paid the staff in cash to recirculate the money and not incur bank charges.

Cllr Horgan asked the following questions:

- Was Mr Giles an employee of David Benson Solicitors; Mr Giles confirmed that he was self-employed and had accepted instructions from the solicitors.
- Had Arun Capital Limited complied with the guidance and kept copies of the individual's passport and other documents securely; Mr Giles referred to several copies of documents and stated these had been retained. The online check had been carried out three days after the individual had been arrested as Mr Vijithran had wanted to double check that the individual was able to work in the UK, which he was.
- It was confirmed that the omission made, was not to carry out an online check and not to request the university term and vacation dates.
- Were the staff of Arun Capital Limited familiar with the Employer's Right to Work check list and processes published by UK Visas and Immigration. It was confirmed that these proceedings had helped Mr Vijithran's understanding of the processes, and he now understood the correct process very well.

- What was the mistake referred to in the letter from David Benson Solicitors Ltd to the Civil Penalty Compliance Team. Mr Giles commented that he did not rely on that sentence, and it was his understanding that it referred to the fact that the individual had not provided the employer with the dates required and had continued to work for more than 20 hours a week, when he should not have; but the obligation around these rules was on the employer not the employee.
- Why were there no records detailing PAYE in order that it could be established beyond reasonable doubt that the employee may have been paid a net wage. Mr Giles stated that his work, as a Barrister, had focused on the employment hours and not the cash details and explained that Mr Vijithran had been open with the Home Office about accounting the tax to the HMRC and they had not followed this up.
- The Letter of Authority referred to a 'daughter', who was this; Mr Giles explained this was a typographical error which was not relevant to the review and should not have been included within the bundle.
- How many years had Mr Vijithran been a DPS; Mr Vijithran responded stating he had been a DPS for more than ten years.
- Could Mr Vijithran confirm that the ten workers employed all had a right to work in the UK; Mr Vijithran confirmed that they did.
- Mr Giles confirmed that Mr Ramadoss started employment in September 2022 and that Mr Vijithran now understood that the right to work checks he carried out were different to the process he should have undertaken. Mr Vijithran explained he had subscriptions and training that kept him updated on Health & Safety concerns and licensing issues which he then passed onto his colleagues; this was last carried out approximately 18 months ago.
- Had Mr Vijithran received any training after the process had changed on 6 April 2022 to which Mr Vijithran explained he had not received any training regarding employment issues, he received that knowledge from his employers and managing directors.
- Why had Mr Vijithran not verified the term dates from the employee; Mr Vijithran stated he had forgotten to track the issue and accepted he should have chased it.
- At the time the individual was employed, who did Mr Vijithran report to; he explained he had reported to the Managing Director since 2005/6.
- Mr Vijithran confirmed that he rented a room out upstairs and he had not had to sought permission to do so. He added that he had received no training regarding renting, and he had not provided a rent book. He explained that the £8 hourly rate was after deductions for tax and rental costs had been taken. The upstairs accommodation had consisted of five rooms with two people living in the accommodation, with an external staircase providing a private entrance to the property.

The Chairman invited Mr Giles, Barrister to sum up his case:

Mr Giles explained that his client had accepted that mistakes had been made when an individual had been employed during termtime for more than 20 hours a week. There had been no response from the Fire Authority with regard to any

fire safety issues, only a letter of support received from the client's landlord. Mr Giles added that the mistake was made in that the correct Right to Work checks had not been carried out, but the employee was not an illegal worker and in his opinion this case did not raise any matters of concern and he therefore urged the Sub-Committee to take no further action on this occasion in respect of the review.

The Chairman checked that all parties felt they had had a fair chance to state their opinions, and he reiterated that up to 5 days were allowed for the communication of the Sub-Committee's decision. He then closed the public session of the meeting at 12:17pm for the Sub-Committee Members (together with their Legal Advisor) to retire to a closed session to consider the evidence and reach a decision.

NOTICE OF DETERMINATION OF LICENSING SUB-COMMITTEE HEARING DECISION NOTICE

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| <u>Date of Hearing:</u> | Friday 24th November 2023 |
| <u>Sub-Committee Members:</u> | Councillor Keith Horgan (Chairman) Councillor Martin Goodearl Councillor Charlotte Cane |
| <u>Officers</u> | Jane Webb – Senior Democratic Services Officer Stewart Broome – Senior Licensing Officer Maggie Camp - Director (Legal Services) Angela Tyrrell - Senior Legal Assistant |
| <u>Applicant:</u> | Home Office Immigration Enforcement represented by: Chief Immigration Officer Rose |
| <u>Licence holder:</u> | ARUN Capital Limited represented by Mr Giles (Appointed Barrister) and accompanied by Mr Sakhivel Vijithran, the premises Designated Premises Supervisor |
| <u>Responsible Authorities:</u> | None |
| <u>Other Persons:</u> | None |
| <u>Application by:</u> | Home Office Immigration Enforcement |
| <u>Premises Address:</u> | Londis, 31 Carter Street, Fordham, Cambridgeshire CB7 5NG. |
| <u>Date of Application:</u> | Wednesday 27th September 2023 |
| <u>Details of Application:</u> | Application to review the Premises Licence under Section 51 of the Licensing Act 2003. |

ORAL AND WRITTEN EVIDENCE PRESENTED TO THE HEARING

Written Evidence

The Sub-Committee members have read the material presented to them and listed below:

The Licensing Officer's Report - this included:

1. A copy of the Applicant's application form and their supporting documentation;
2. A copy of the existing licence for Londis held by ARUN Capital Limited;
3. A copy of a representation supporting the Licence Holder;
4. A location plan of the premises;
5. Section 182 Statutory Guidance extracts;
6. Local Statement of Licensing Policy extracts.

The Licence Holder

A defence bundle provided by the Licence Holder after the report had been published, but prior to the start of the hearing.

Oral Evidence

The Sub-Committee members heard the following oral evidence:

The Licensing Officer

The Licensing Officer presented the report.

The Applicant

The Applicant's agent Chief Immigration Officer Rose provided an overview of their application, explaining why they considered it necessary to apply to review the licence, and then answered questions from Members, officers, and the licence holder's representative Mr Giles through the Chairman.

The Licence Holder

The Licence Holder's agent Mr Giles presented his client's case, explaining why they felt the application was not justified, and then answered questions from Members, and officers. During this stage of the hearing certain questions were deferred by Mr Giles to Mr Sakthivel Vijithran to answer.

The following Guidance was considered:

East Cambridgeshire District Council Statement of Licensing Policy – 7th January 2021 Revised Guidance issued under section 182 of the Licensing Act 2003 – August 2023

DECISION

The decision of the Licensing Sub-Committee (in exercise of the powers delegated by East Cambridgeshire District Council as Licensing Authority) was to:

REVOKE the premises licence held by ARUN Capital Limited in respect of Londis, 31 Carter Street, Fordham, Ely, Cambridgeshire CB7 5NG due to their failure to uphold and promote the licensing objective of the Prevention of Crime and Disorder, pursuant to the Licensing Act 2003.

REASONS FOR THE DECISION

1. In making their decision, the Sub Committee had regard to the four licensing objectives, namely the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. The Sub Committee agreed that the licensing objective of the prevention of crime and disorder was engaged and the Premises Licence Holder had failed to uphold and promote this.
2. This was evidenced by :
 - The Premises Licence holder's failure to follow the requirements in relation to the right to work checks in force at the time of the employment of the employee alleged to be working in breach of his student visa;
 - The Premises Licence holder's failure to follow up on basic activities of establishing term dates for the employee as required by Annex B of the Home Office Guidance and for which online guidance is available and should be part of "business as usual" practices. It is clear from the guidance that the emphasis is very much on the employer to obtain this information and there had been a failure to obtain this;
 - Oral evidence given at the hearing raised considerable concern that the Licence Holder failed to follow appropriate HMRC rules and regulations to ensure the correct payment of tax, the level of salary provided to a particular employee, NI deductions and the correct keeping of records in relation to such matters. This evidence, in addition to that regarding the employment of a potentially illegal worker, pointed to a culture of a disregard for legislation and the need to comply with UK law;
 - No written evidence was available before, or provided during the hearing, in relation to good record keeping in relation to employment matters;
 - General poor level of management practices; and
 - The Licence holder acknowledged their mistake regarding the hours permitted to be worked by the employee as 30 instead of 20; however, evidence was provided that indicated that the employee was working in excess of 30 hours in some weeks.
3. Members noted that the Home Office had not pursued a penalty against the Premises Licence holder under immigration legislation but had pursued a review of the Premises Licence. The application details that the Licence Holder could have avoided the review if it had conducted the proper right to work checks and adhered to the restrictions placed on the employee's visa. The supporting documentation details that the use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue, which cannot be taken lightly.

4. Having considered all the evidence presented, the Sub-Committee determined that the Premises Licence Holder had failed to uphold and promote the Licensing objective of the Prevention of Crime and Disorder and consequently, for all the above reasons, the Premises Licence should be revoked.

RIGHTS OF APPEAL

The Applicant or any persons who made a relevant objection have a right of appeal against this decision. Notice must be given to the Clerk to the Cambridge Magistrates' Court, The Court House, Bridge Street, Peterborough PE1 1ED within 21 days of notification of the Licensing Sub-Committee's decision. Email: cb-enquiries@hmcts.gsi.gov.uk

Chairman.....

Date.....