

LICENSING SUB-COMMITTEE

Minutes of the proceedings at a meeting of the Licensing Sub-Committee held in the District Council Chamber, South Lakeland House, Kendal, on Wednesday, 5 May 2021, at 10.00 a.m.

Present

Councillors

Kevin Holmes

Andrew Jarvis

Alvin Finch

Apologies for absence were received from Councillor David Webster.

Officers

Courage

Legal, Governance and Democracy Specialist

Aiguobasinmwin

Louisa Wania

Case Management Officer

Rowland Wilson

Specialist - Licensing

LS/46 INTRODUCTION

Following confirmation that the live stream of the meeting had commenced, the Legal, Governance and Democracy Specialist welcomed everyone to the virtual meeting of South Lakeland District Council's Licensing Sub-Committee.

The Legal, Governance and Democracy Specialist then invited Members of the Committee to introduce themselves, to advise whether they were taking part by video and/or audio and to confirm that they were able to see (where practicable) and hear all Members participating in the meeting. All Members present, having indicated that this was the case, the Legal, Governance and Democracy Specialist then invited Jonathan Allen, Home Office Immigration Enforcement Department Officer ("the Applicant") who had joined the meeting using Microsoft Teams, to introduce himself and confirm that they were able to hear and/or see the proceedings. He then referred to officers present at the meeting who would introduce themselves when asked to address the meeting.

LS/47 ELECTION OF CHAIRMAN

RESOLVED – That Councillor Andrew Jarvis be elected Chairman for the meeting.

LS/48 APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

Councillor David Webster having tendered an apology for absence, Councillor Alvin Finch, as substitute Member, took his place on the Sub-Committee.

LS/49 DECLARATIONS OF INTEREST

RESOLVED – That it be noted that no declarations of interest were raised.

LS/50 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS

RESOLVED – That it be noted that Part II of the Agenda be dealt with following the exclusion of press and public.

LS/51 REVIEW OF A PREMISES LICENCE

- Paragraph 1, 2, 5, 7 - Information relating to any individual.
 - Information which is likely to reveal the identity of an individual.
 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
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- Paragraph 1, 2, 5, 7 - Information relating to any individual.
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The Licensing Specialist informed the Sub-Committee that the Mr Okkes Ozmicco ("Licence Holder") was absent at the hearing. The Legal, Governance and Democracy Specialist informed the Sub-Committee that the Licence Holder had stated that he had sold the premises and relocated overseas due to ill-health. The Sub-Committee decided that the hearing was to proceed in the Licence Holder's absence due to the fact that he had been served the relevant notices and documentations relating to the hearing and that there was no confidence that the Licence Holder would attend were the hearing to be postponed.

Note - Due to the nature of this hearing and before representations from all parties could be heard, the Sub-Committee passed a resolution to exclude the press and public from this hearing in accordance with Regulation 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005 as it was considered that the public interest in excluding the public from the hearing outweighs the public interest in the hearing taking place in public.

Furthermore, in accordance with exemption reasons under Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, specified by way of paragraph number:

- paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information)
- paragraph 7- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

As a result, Members and the Applicant moved to a private Part II meeting for representations to be heard.

Note - Having heard relevant representations, questions and closing statements from the Applicant in attendance, the Part II meeting was suspended and by a resolution passed by the Sub-Committee to adjourn the meeting to exclude the press and public in making its decision, pursuant to Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006 by virtue of the paragraph indicated:- Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The Chairman explained to all the Applicant that they would be disconnected from the virtual meeting in order for the Sub-Committee to reach their decision. Once the Sub-Committee had concluded their deliberations the Applicant and public participants would be reconnected and the meeting would be reconvened for the decision of the Sub-Committee to be read in Part I.

The Sub-Committee, supported by the Legal, Governance and Democracy Specialist then withdrew at 10.50 a.m. to consider the application.

The meeting reconvened at 11.36 a.m.

All parties including the Applicant were reconnected to the virtual meeting in order to hear the decision of the Sub-Committee. The Legal, Governance and Democracy Specialist held a new roll call and the Chairman asked the parties if they were able to hear the proceedings.

The Legal, Governance and Democracy Specialist communicated the Sub-Committee's decision.

RESOLVED – The Licensing Sub-Committee have resolved that it was appropriate, proportionate and in the interest of promoting the licensing objectives to revoke the premises licence PL (N) 032811 Flames Pizzeria, 7 New Market Street, Ulverston, Cumbria, LA12 7LQ.

Note – All present were notified that the detailed reasons for the decision would be communicated to the relevant parties in due course. Parties had a right to appeal against the decisions of the Sub-Committee and may do so by giving notice of appeal to the Magistrates Court for the area in which the premises concerned are situated within a period of 21 days beginning with the day on which they were notified of the decision by the licensing authority.

Note – The following reasons for decisions were communicated following the proceedings.

Reasons for Decisions

The sub-committee were grateful for the representations made and they found them helpful in reaching its decision. The sub-committee heard evidence from Mr Jonathan Allen representing Home Office Immigration Enforcement Department ("the Applicant"). The sub-committee ensured that the party present, were afforded opportunity to present their case. At the conclusion of the hearing, the party in attendance confirmed that the hearing procedure had been fair.

The sub-committee had regard to paragraphs 8.19, 8.25 and 8.31 of the Council's Statement of Licensing Policy which sets out the actions to be taken before a review is conducted, when discretion of the sub-committee are engaged for a condition to be imposed and the need for applications to be determined in its own merit.

Additionally, the sub-committee carefully considered section 182 guidance issued under the Licensing Act 2003. It was particularly mindful of:

1. Paragraph 11.26 which states that:-

"Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. (...). The licensing authority's duty is to take steps with a view to the promotion

of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.”

2. Paragraph 11.27 which states that:-

“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 employing a person who is disqualified from that work by reason of their immigration status in the UK.”

3. Paragraph 11.28 which states that:-

“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.”

At the commencement of the hearing, the sub-committee were informed that no representations or acknowledgement had been received from the Premises Licence Holder, Mr Okkes Ozmicco. The sub-committee were informed that various steps had been taken to bring the notice of the hearing to the Premises Licence Holder’s attention from 16 April 2021; including using all emails and addresses the Council had and also by hand delivering the hearing documents. During the hearing, the sub-committee were informed that contact had just been made with Mr Okkes Ozmicco who informed Officers of the Council that he had sold the business and relocated outside the UK due to ill health. The sub-committee considered whether adjournment was needed. However in light of the update, the sub-committee were satisfied that every effort had been taken to bring the hearing to the attention of the Premises Licence Holder as required by law and that nothing else could be done by the Council. The sub-committee was not satisfied that an adjournment would serve useful purpose.

The sub-committee was satisfied that the problems arising from the Premises were not merely the result of poor management by Mr Okkes Ozmicco; rather, that poor management was as a direct consequence of poor business practices. Therefore Mr Okkes Ozmicco was aware of the issues at the Premises and had not adequately or effectively addressed the problems that the sub-committee found had beset the premises. The sub-committee did not consider Mr Okkes Ozmicco able to manage the overall operation of the premises in a way that will promote and uphold the licensing objectives. In particular, having regard to the previous visit by the Applicant in September 2019 where Mr Okkes Ozmicco was fined £10,000.00 for employing illegal immigrant. The fine the sub-committee were informed remained unpaid and did not act as a deterrence from employing more illegal immigrant’s. As discovered in a subsequent visit in October 2021 more than 2 illegal immigrants were employed by the Applicant, one of whom was previously encountered in the September 2019 visit.

No Further Action or Informal Warning:

In reaching its decision, the sub-committee considered whether the option of doing nothing or offering Mr Okkes Ozmicco an informal warning was appropriate. In light of the evidence, the sub-committee was satisfied that Mr Okkes Ozmicco had previously been warned on previous occasion (September 2019) by Applicant for the need to take steps to prevent the licensing objectives being undermined by employing illegal immigrants. The previous warning issued to Mr Okkes Ozmicco by the Applicant satisfied paragraph 11.18 of s182 guidance which provides that *“where responsible authorities ... have already*

issued warnings requiring improvements either orally or in writing that have failed ... the licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. The licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing illegal worker”.

To Modify the Conditions of the Premises Licence:

The sub-committee was not satisfied that an imposition of additional conditions to the Premises Licence to secure compliance of the licensing objective by Mr Okkes Ozmicco given that a previous fine of £10,000.00 did not make a difference to the business practice. The Actions of Mr Okkes Ozmicco showed total disregard for immigration laws which prevented the employment of illegal immigrants. Evidence before the sub-committee showed Mr Okkes Ozmicco employed multiple illegal immigrants on more than one occasion which showed a pattern of non-compliance.

To Exclude a Licensable Activity from the Scope of the Premises Licence:

The sub-committee considered whether compliance with the licensing objectives could be secured by excluding a licensable activity from the scope of the Premises Licence. This option was not considered appropriate as the premises licence only permitted one licensable activity for the provision of late night refreshments between Sunday to Thursday 23.00 - 00.00 hours and Friday & Saturday 23.00 – 01.00 hours.

The sub-committee does not consider adjusting the hours or dates of operation practical and neither did it consider it will promote the licensing objective.

To Remove the Designated Premises Supervisor:

In accordance with s17 (4) (e) of the Licensing Act 2003, the Premises is only licensed for Late Night Refreshment. It licensable activities does not include the supply of alcohol as such, the Premises Licence does not require a Designated Premises Supervisor. This option was not available to the sub-committee.

The sub-committee were satisfied that Mr Okkes Ozmicco continued involvement in this premises and as the Premises Licence Holder will continue to show flagrant disregard for the licensing objective of *‘the Prevention of Crime and Disorder’* in the continued breach of the immigration laws which prevents the employment of illegal immigrants.

To Suspend the Premises Licence for a Period not Exceeding Three Months:

Consideration was also given to suspend the Premises Licence for a period not exceeding three months. On the evidence before it, the sub-committee were not satisfied that a time limited suspension of the Premises Licence would address adequately or at all, the unsatisfactory management and operation of the Premises. The sub-committee also noted that the Mr Okkes Ozmicco has also sold the business and premises to someone else and relocated outside the UK without transferring the Premises Licence or informing the Licensing Authority. Consequently, this measure would not be likely to secure promotion of the licensing objectives. No information or evidence was presented to the sub-committee that indicate any proposal to address the issues at the Premises and promote the licensing objective engaged.

The sub-committee noted that the repeated breaches at the Premises of the same nature is indicative that a temporary suspension was not likely to yield compliance, promote the licencing objective and the law.

To Revoke the Premises Licence.

The sub-committee concluded the only viable, appropriate and proportionate option available to it was the revocation of Flames Pizzeria's Premises Licence with reference number PL (N) 032811.

The decision to revoke the premises licence was considered by the sub-committee as a last resort and it was not taken lightly. Evidence from the Applicant and the responses provided at the hearing was considered by the sub-committee as an indication that Mr Okkes Ozmicco is unsuitable to continue to hold Premises Licence. The promotion of the licensing objectives were considered paramount in this case.

NB: In accordance with section 181 and Schedule 5, paragraph 8 of the Licensing Act 2003, the relevant parties have a right of appeal to the Magistrate's Court within 21 days from date of Council's Licensing Sub-Committee's decision.

The meeting ended at 11.49 a.m.