STATUTORY LICENSING SUB COMMITTEE

A meeting of Statutory Licensing Sub Committee was held on Wednesday 21 August 2024.

Present: Cllr Eileen Johnson (Chair), Cllr Mrs Ann McCoy and Cllr Mick Moore.

Officers: Elliott Beevers, John Devine, Polly Edwards and Natalie Hodgson.

Also in attendance: PC Andrew Thorpe (Cleveland Police), Duncan Craig (St Phillips Barristers) and Ms J Henderson (Home Office Immigration Enforcement)

Apologies: .

SLS/6/24 Evacuation Procedure

The evacuation procedure was noted.

SLS/7/24 Declarations of Interest

There were no declarations of interest.

SLS/8/24 APPLICATION FOR REVIEW OF A PREMISES LICENCE LEBANEAT, 48 HIGH STREET, YARM, STOCKTON-ON-TEES, TS15 9AH

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee were asked to consider an application for a review of a premise licence for Lebaneat, 48 High Street Yarm Stockton-on-Tees, TS15 9AH from the Home Office Immigration Enforcement under section 51 of the Licensing Act 2003, on the grounds of the prevention of crime and disorder.

The Chair introduced all persons who were present and explained the procedure to be followed during the hearing.

A copy of the report and supporting documents had been provided to all persons present and to members of the Committee.

Members noted that the review of the premises licence was made at the request of the Home Office Immigration Enforcement.

The Immigration Compliance & Enforcement Officer from Home Office Immigration Enforcement, Ms Henderson explained to the Sub-Committee that the ability to work illegally was a key driver of illegal migration; it encouraged people to break the UK's immigration laws and provided practical means for migrants to remain unlawfully in the UK.

The Sub-Committee heard that working illegally was a criminal offence and an illegal worker may receive a custodial sentence of up to six months and an unlimited fine upon conviction. Ms Henderson told the Sub-Committee that employing illegal workers was also a criminal offence, undermining the prevention of crime and disorder licensing objective.

Ms Henderson explained that it was not routine for the Home Office to seek a review, and that was only undertaken in particular cases where there were increased concerns around illegal working.

The Sub-Committee heard that on 26 March 2024, the Home Office's North East Immigration Compliance and Enforcement team visited the premises, accompanied by a Licensing Officer, after intelligence was received that the premises was employing illegal workers.

Ms Henderson stated that three illegal workers were encountered at Lebaneat, out of a total of five staff members present. The Sub-Committee heard that one of the illegal workers, who was also seen at the premises on previous occasions, was identified by two employees as holding a managerial position, having worked at the premises for a considerable amount of time. Ms Henderson expressed the Home Office's concern that an illegal worker had been placed in a managerial position.

The Sub-Committee heard that the remaining two illegal workers found on the premises had both been issued with application registration cards, confirming that they had no right to work in the UK. The Sub-Committee were told that one of the illegal workers admitted that their employer was aware that he had no right to work.

Ms Henderson explained to the Sub-Committee that all employers were dutybound by law to conduct right to work checks. The Sub-Committee heard that a referral was made to the Home Office's Civil Penalty Compliance team in relation to illegal working at the premises, following which a penalty notice in the sum of £45,000 was issued on 1 August 2024.

The Sub-Committee were informed that another Lebaneat premises in Durham had their premises license revoked in 2018, due to illegal working, and that the Lebaneat premises in Yarm also had its premises licence revoked in 2019 due to the same concerns.

Mr Duncan Craig of St Philips Barristers representing Ms Sayed the sole company director of Lebaneat and the Committee Members were invited to ask questions of Ms Henderson.

The Sub-Committee heard from PC Thorpe that the premises licence was previously revoked in 2019, following an application by Cleveland Police, due to concerns around illegal workers.

PC Thorpe told the Sub-Committee that this revocation was appealed to the Magistrates' Court, and a hearing date was set, however due to the coronavirus pandemic the appeal was never heard. The Sub-Committee heard that the appeal was subsequently withdrawn and the premises licence re-instated by agreement between the parties, with additional conditions being added to the licence to ensure right to work checks for employees would be conducted fully.

Mr Craig informed the Sub-Committee that his client, was not present at the hearing as she had recently given birth.

The Sub-Committee heard Mr Craig concede that the licence condition in relation to right to work checks was clear. Mr Craig stated that his client trusted a member of staff

to deal with recruitment whilst she was away, and that person had now been dismissed because of the failings.

Mr Craig stressed to the Sub-Committee that the civil penalty issued by the Home Office related to just one of the illegal workers, and that the £45,000 fine issued was not the maximum amount of £60,000.

Mr Craig explained to the Sub-Committee that his client was hoping to step back from the business, potentially by way of a franchise. The Committee heard from Mr Craig that his client understood the seriousness of these issues and accepted that she could be removed as the Designated Premises Supervisor as a result. Mr Craig stated that it was inappropriate to suggest any further conditions be added to the licence, as he did not feel that these would assist in such circumstances.

The Sub-Committee were told by Mr Craig that his client was not a director of the company at the time of the previous revocation in 2019. Mr Craig urged the Sub-Committee to step back from revoking the premises licence, and to consider suspending the licence for up to 13 weeks instead.

The Committee Members and other parties present were invited to ask questions of Mr Craig.

All parties present were given an opportunity to sum up their case.

Members of the Licensing Sub-Committee of the Council's Statutory Licensing Committee considered the above application, full details of which appeared before the Members in their agenda and background papers.

Members noted that the review of the premises licence was made at the request of the Home Office, due to illegal workers being found at the premises.

Representations had been received from other responsible authorities including Cleveland Police and the Council's Licensing team. Mr Craig provided a detailed submission on behalf of his client. The Committee noted that no representations had been received from anyone else in support of the premises.

Members of the Licensing Sub-Committee carefully considered those matters brought before them and, in reaching their decision, had regard to their powers under the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the relevant paragraphs of the Guidance Issued under Section 182 of the Licensing Act 2003 (as amended) and the Council's Licensing Policy.

It was noted that Mr Craig had not disputed any of the evidence presented by the responsible authorities.

The Sub-Committee noted the following:-

The premises had breached immigration law in utilising illegal workers, constituting a criminal offence;

This was not the first time that the premises had come to the attention of responsible authorities due to concerns over illegal workers, who had their premises licence revoked in 2019 due to the same issue; and

The premises had failed to comply with their premises licence conditions in relation to right to work checks.

The Sub-Committee had regard to the statutory guidance issued under section 182 of the Licensing Act and in particular the paragraphs in relation to the review of premises licences.

The Sub-Committee noted a premise licence holder must ensure that the promotion of the four statutory licensing objectives was always a paramount consideration. In the Sub- Committee's view, Lebaneat Yarm Limited had failed in this responsibility.

Ms Oksana Sayed was the sole director of Lebaneat Yarm Limited, and the Designated Premises Supervisor of Lebaneat in Yarm.

The Sub-Committee noted that Mr Craig had been frank in admitting wrongdoing on his client's behalf. None of the evidence before the Sub-Committee was disputed.

The Sub-Committee had regard to the powers available to them when considering what action, if any, to take under the premise licence review process.

• The Sub-Committee could take no action.
The Sub-Committee viewed the actions of Lebaneat Yarm Limited to be extremely serious, and therefore did not feel that this was an option open to them in the circumstances.

• The Sub-Committee could attach further conditions to the licence.
Again, the Sub-Committee did not feel that this was a case where additional conditions were appropriate to remedy or address the behaviour of Lebaneat Yarm Limited. The Sub-Committee noted that Mr Craig had expressed the same view.

• The Sub-Committee could remove Ms Sayed as the Designated Premises Supervisor.
The Sub-Committee considered this option, however were of the view that this would not be appropriate given that Ms Sayed remained as the sole director and controlling mind of Lebaneat Yarm Limited.

• The Sub-Committee could suspend the licence.
The Sub-Committee, in the past, had considered this an appropriate course of action to allow a premises time to take steps to remedy issues. The Sub- Committee felt, however, that the issue of illegal workers was too serious, compounded by this not being the first time that this issue had been found at the premises.

• The final and ultimate sanction was the revocation of the premises licence.

This was not a step that the Sub-Committee took lightly and would only be taken in relation to matters which they deemed to be serious breaches of the licensing objectives.

The Sub-Committee found that no evidence that employment practices had improved at the Premises and no lessons appeared to have been learned since the revocation in 2019.

The Sub-Committee took this matter extremely seriously and were satisfied that this was a case where revocation of the premises licence was a necessary and appropriate sanction. After considering and weighing up all the evidence and submissions made by the parties to the hearing, the Sub-Committee resolved to revoke the premises licence.

RESOLVED that the Premise Licence for Lebaneat 48 High Street, Yarm, Stockton-On-Tees TS15 9AH be revoked for the reasons as detailed above.