



**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**REVIEW OF PREMISES LICENCE FOLLOWING AN ILLEGAL WORKING
COMPLIANCE ORDER – INDIAN TREE, MARKET PLACE, RINGWOOD**

Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on Thursday, 18 May at 10.00am

1. Members of the Licensing Sub-Committee

Councillor S Clarke - Chairman
Councillor R Frampton
Councillor L Harris

2. Parties and their Representatives attending the Hearing

Mr A Bachhu – Premises Licence Holder/Designated Premises Supervisor
Mrs J Rowley – Barrister Representing the Premises Licence Holder

Mr M Wilkinson – Home Office, Applicant for Review
Mr T Pleydell – Home Office, Applicant for Review
Mr A Beacuarbis – Hampshire Constabulary supporters of the Review

3. Other Persons attending the Hearing

Mr S Stone – Licensing Manager
Ms S Wilson – Licensing Officer

4. Parties not attending the Hearing

None.

5. Officers attending to assist the Sub-Committee

Kate Green – Legal Advisor
Melanie Stephens - Clerk

6. Decision of the Sub-Committee

1. The premises licence will be suspended for a period of 3 months. This will commence from the relevant time in accordance with S. 168 (2) Licensing Act 2003.
2. Mr Adib Ahmed Bachhu will be removed as Designated Premises Supervisor and the Sub-Committee recommend that the personal licence held by Mr Bachhu be considered separately by the Licensing Authority.
3. That the following conditions, as suggested by the Premises Licence Holder's legal representative at the hearing be attached to the licence, namely:-
 - a. That the Designated Premises Supervisor undertakes full responsibility for the recruitment of all workers employed at the premises on a full time or temporary basis.
 - b. The Designated Premises Supervisor undertake right to work checks on all staff employed at the licensed premises;
 - c. That copies of any document checked as part of a right to work are retained at the premises at all times the premises are open; and
 - d. That copies of the right to work documentation are made available to the Licensing Authority, the Home Office and the Police for inspection on the premises, without notice at any time. .

7. Reasons for the Decision

The Sub-Committee carefully considered the evidence, both written and oral, supplied in advance of and at the hearing by the Designated Premises Supervisor, Home Office and Police.

At the outset of the hearing, the Licensing Officer introduced the report to the Sub-Committee and outlined that an Illegal Working Compliance Order had been issued by Portsmouth Magistrates' Court on 28 April 2017 for a period of twelve months. This was received by the Licensing Authority on 5 May 2017. In accordance with S. 167 (1A) Licensing Act 2003 this triggered the requirement for a review hearing to be held. The Licensing Officer explained the options available to the Sub-Committee for consideration in accordance with the licensing objectives, namely;

- Modify the conditions of the premises licence
- Exclude a licensable activity from the scope of the licence
- Remove the Designated Premises Supervisor from the licence
- Suspend the licence for a period not exceeding three months
- Revoke the licence

The Home Office representatives outlined the background that had caused them to apply for the Illegal Working Compliance Order. It was confirmed that having received intelligence of illegal working at the Indian Tree restaurant, immigration enforcement officers visited the premises on 27 April 2017 where two individuals were found to be working illegally on the premises. One individual was served immigration paperwork and arrested for overstaying his visa, the second individual was served immigration

paperwork and arrested for illegal entry. The Premises Licence Holder was not present on the premises at the time the immigration enforcement officers arrived at the premises but following a telephone call from the officers, he attended the restaurant within 20 minutes. Immigration enforcement officers interviewed the Premises Licence Holder during which he denied all involvement, knowledge or employment of the two individuals found to be illegally working on the premises. Both individuals initially claimed that they had only arrived the day before but following searches of the living accommodation officers identified that one of the individuals had been in the area since December 2016. Once this information was put to that individual he confirmed that he had been working at the premises for three months washing up in the kitchen.

The Home office representative confirmed that they had not been provided with any evidence to show that any checks had been made in relation to the two individuals' rights to work in the UK. The representative for the Home Office confirmed that this visit was not the first of its kind to these premises and in the past, four similar visits had taken place, all of which resulted in arrests being made for immigration offences. A visit on 27 October 2016 had identified one individual who had overstayed his visa. This resulted in Mr Bachhu being served with a civil penalty notice for £10,000 for a breach of S. 15 Immigration Asylum and Nationalities Act 2006.

The Sub-Committee then heard from a representative from Hampshire Constabulary who supported the review, on the basis that the actions of the Premises Licence Holder undermined the prevention of crime and disorder licensing objective. The representative confirmed that Hampshire Constabulary had concerns about the poor management of the premises undermining the licensing objectives. The representative wished to press on the Sub-Committee that this order had not come about following one isolated incident, but was as a result of persistent breaches in relation to the employment of illegal workers at the premises. He stated that thirteen arrests had taken place at the premises in relation to Immigration Act offences since 2012. The police representative referred specifically to the Revised Guidance under S. 182 Licensing Act 2003 issued in April 2017, in particular paragraph 11.27 which outlined that certain criminal activity that may arise in connection with a licensed premises should be treated particularly seriously, one such crime being *"for employing a person who is disqualified from that work by reason of their immigration status in the UK"*.

The police representative pointed out that 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.

As the Premises Licence Holder had been involved in the premises since 2010 and the premises had been continually failing to undertake immigration checks, he asked the Sub-Committee to consider whether Mr Bachhu was a suitable person who was capable of upholding the licensing objectives. The police therefore were seeking revocation of the licence, or in the event that the Sub-Committee were not satisfied that revocation was appropriate, then he requested that consideration be given to attaching relevant Mr Bachhu was legally represented and he read from a prepared statement which was accepted by all parties as additional evidence for consideration by the Sub-Committee. In his statement Mr Bachhu confirmed that he was truly sorry for the events that had led to this review hearing. He explained

that although he had been the Designated Premises Supervisor and Premises Licence Holder since 2010 he had not in fact been in control of the management of the business until last year. He did accept that he had been linked to the premises during the whole time that the issues of illegal working and Home Office visits had occurred. He also confirmed he was aware of all the previous arrests. He had previously been working as a waiter following a disagreement with his partner whom he had initially planned on starting the business with. He confirmed that he was now paying back a £10,000 civil penalty at a rate of £277 per month and was expecting a further penalty notice in the near future further to the recent visit by Home Office Immigration enforcement officers on 27 April 2017. Mr Bachhu was insistent that the two individuals arrested on the 27 April 2017 were not employees who he had appointed and he had previously instructed his chef to invite the individuals to submit their paperwork and attend an interview before commencing employment. He confirmed that no disciplinary action had been taken against the chef for bringing these individuals into the kitchen either as employees or guests. He confirmed that he was responsible for training front of house staff on the licensing requirements. He also stated that he legitimately employed 8 individuals and he supported his family on the basis of the business generated from operating The Indian Tree. He confirmed that the revocation of his premises licence would be likely to harm the employees of the restaurant and his family, as it would likely lead to him having to close the business.

Mr Bachhu provided evidence of right to work checks having been carried out on all the remaining and recently appointed employees that demonstrated compliance with the Illegal Working Compliance Order. This evidence was welcomed by the Home Office and the Police. Mr Bachhu now realised the severity of his actions and wished to reassure the parties and the Sub-Committee of his commitment to comply with the order and the legislation. Mr Bachhu's legal representative confirmed to the Sub-Committee that Mr Bachhu would be willing to accept conditions on the licence that could further address the issues and she also pointed out that this premises did not have any issues from either a food safety or a statutory nuisance ground. The premises had a 5 star hygiene rating and no other crime or disorder issues had been reported at the premises. The representative acknowledged the severity of the situation but asked the Sub-Committee to exercise their powers in a proportionate manner taking into account all the licensing objectives.

The Sub-Committee recognised the assistance provided to them from all parties on the relevant issues. The Sub-Committee felt that the explanations provided by the Premises Licence Holder for the events that gave rise to the Illegal Working Compliance Order were not consistent with the evidence submitted by the Home Office which are an intelligence-led organisation. However, the Sub-Committee acknowledged that the Premises Licence Holder had now undertaken the duties required of him in a serious manner.

The Sub-Committee had concerns that the Premises Licence Holder could not adequately account for the training and induction processes given to new staff in relation to the licensing requirements and duties. The Sub-Committee were also disappointed to note that there was an unwillingness to accept the full responsibility for the presence of illegal workers within the Indian Tree and a long delay in accepting the need to take this issue seriously. The Sub-Committee wanted their decision to reflect the seriousness of the situation balanced against the compliance with all the licensing objectives and the subsequent steps taken following the issue of

the Illegal Working Compliance Order. It was felt therefore that the three month suspension imposed was a proportionate and appropriate measure. The Sub-Committee felt that Mr Bachhu did not reassure them of his ability to appropriately manage the licensed activities on the premises and he appeared too casual as to the requirements of him as Designated Premises Supervisor. For this reason the Sub-Committee felt that they could not endorse Mr Bachhu's continued involvement in this position and therefore have removed him as Designated Premises Supervisor. The Sub-Committee also recommend that the personal licence of Mr Bachhu is reviewed in light of the history of the premises and his involvement in it, to consider whether Mr Bachhu continues to meet the threshold of a suitable personal licensee.

To further safeguard the licensing objectives under a new Designated Premises Supervisor, and to add a further measure to address the historic failures to comply with immigration laws the Sub-Committee felt that the conditions suggested by the representative of Mr Bachhu should be applied to the licence. These are set out in section 6 above.

The Sub-Committee wish to confirm to all parties that should any further issues arise in relation to the facts heard today, then those issues should be considered at a licence review hearing.

Date: 18 May 2017

Licensing Sub-Committee Chairman: Cllr S Clarke

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Decision notified to interested parties on 25 May 2017