

Licensing Hearing Panel – Supplementary agenda no. 1

A meeting of the Licensing Hearing Panel will be held on:

Date: 11 June 2019

Time: 9.30am

Venue: Meeting Room 2 - Level 3, Gun Wharf, Dock Road, Chatham ME4 4TR

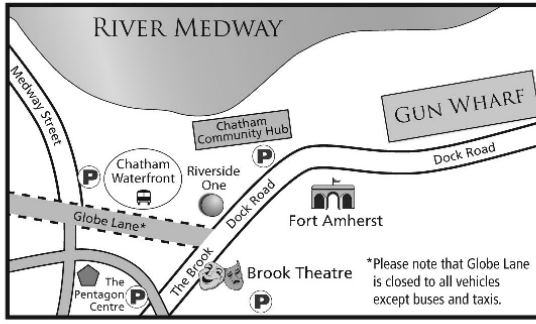
Items

- 7 Licensing Act 2003 - Application for a review of a premises licence, Taj Cuisine, 1 Sherwood House, Walderslade, Chatham, Kent, ME5 9UD (Pages 3 - 10)**

The attached defence report submitted by the Premises Licence Holder's representative was circulated at the meeting with the agreement of the Panel and Kent Police.

For further information please contact Stephen Platt, Democratic Services Officer on Telephone: 01634 332011 or Email: democratic.services@medway.gov.uk

Date: 17 June 2019



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中文	331781	हिंदी	331783	Polski	332373	ଏହିସଂସ୍କୃତ	331786	فارسی	331840	Lietuviškai	332372



**Review of Application
for the Premises License of
Taj Cuisine**

**1 Sherwood House
Walderslade
Chatham
Kent
ME5 9UD**

dated

11th June 2019

1.0 Background Information

PC 11044 HUNT has applied for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below

This premise has been granted a premises licence by Medway Council and is authorised to conduct the following licensable activities:

Sale of alcohol: Monday to Thursday 12:00 to 14:30 and 18:00 to 00:00 (midnight), Friday 18:00 to 00:00 (midnight) and Saturday to Sunday 12:00 to 14:30 and 18:00 to 00:00 (midnight).

Late night refreshment: Monday to Saturday 23:00 to 00:00 (midnight) and Sunday 23:00 to 23:30.

The opening hours of the premises reflect the permitted hours for the sale of alcohol.

Taj Cuisine operates as a restaurant and takeaway providing Indian cuisine. The premises licence holder is Taj Cuisine Limited and the designated premises supervisor is Mr Abdul Monsur, positions held since 2005. Mr Abul Monsur is the registered company director of Taj Cuisine Limited.

Taj Cuisine was visited by Home Office Immigration Officers executing a warrant at approximately 20:00 hours on Friday 18th January 2019. Also in attendance was PC HUNT from Kent Police Licensing. Abul Monsur was present at the time of this visit. Upon entry, immigration officers took up strategic positions within the premises in an attempt to cover key areas in order to best monitor those inside the premises. Unfortunately before the premises was fully contained, three persons presumed to be staff members ran from the premises via a fire exit. One of those persons was detained but two were never located. In total four persons were found to be working at the premises illegally. All four persons were interviewed at scene.

Person one made admissions to working as a waiter. He claimed he had worked at the premises for 2 months and that Abdul Monsur had given him the job. He stated that he worked each Friday and Saturday for £30 to £40 cash per day. He claimed never to have shown Abdul Monsur any immigration documents prior to his employment at the premises.

Person two made admissions to working at the premises for 1 day stating that his job was washing up. He stated that he had no contract and did not know how he was to be paid. He stated that he had previously worked at the premises from 2009 to 2014 whilst he was a student.

Person three stated that he had worked at the premises for 3 days. He stated that he was in the United Kingdom on a student visa which had now expired. He described his job as washing and helping out. He did not know how much he would be paid and stated he was receiving food. He said it was only his intention to work at the premises until the end of the week. He stated he showed no identification to the boss prior to his employment.

Person four stated that he had worked at the premises for a few days. He stated he was working as kitchen porter and described his employer as being called Monsur. He claimed he was to be paid £100 per week. He made admissions to knowing he had no right to work and stated that he had not shown any papers prior to his employment. He stated his hours of work are 11:00 to 14:00 and 17:30 to 23:00.

Immigration officer's offered Abdul Monsur the opportunity to be interviewed in relation to employing illegal workers but Abdul Monsur declined to be interviewed.

PC Hunt later met Abdul Monsur at the premises at approximately 12:00 on Tuesday 29th January 2019 in order to conduct a premises licence compliance check.

Condition 5 of the premises licence states:

CCTV cameras installed and maintained with an incorporated recording facility. Recordings to be stored for an appropriate period (generally one month - but to be agreed with police and licensing authority). The CCTV system to be fully operationally throughout the hours that the premises are open for licensable activity.

During the premises licence compliance check PC Hunt attempted to view the footage recorded on the system hard drive covering the time period of the warrant on 18th January 2019. There appeared to be a fault on the CCTV system as it would not allow PC Hunt to view previously recorded footage. During this same visit Abdul Monsur explained that he does conduct the necessary checks required to ensure that his employees have a legal entitlement to work. He stated that he had previously kept records of such checks and documents on his mobile phone which sadly he no longer had access to. Abul Monsur was given advice regarding his record keeping.

Taj Cuisine was visited by Home Office Immigration Officers executing another warrant in the evening of Friday 15th February 2019. On this occasion one person was found to be working at the premises illegally. This same person had been found working illegally at the premises on Friday 18th January 2019. On this occasion he claimed to be only making his own food. Abul Monsur claimed that this person was a relative of the chef and was just getting some food.

Home Office Immigration have served Taj Cuisine with two separate Civil Penalty Notices for employing illegal workers as a result of the execution of the two recent warrants.

Home Office Immigration officers have provided evidence of other occasions when persons have been found to be working at this premises illegally. On 27th August 2008 immigration officers attended the premises and located one person working illegally. On 22nd February 2013 immigration officers attended the premises and located three person working illegally. Mr Abdul Monsur has been the designated premises supervisor at Taj Cuisine at the time of each and every immigration visit mentioned in this review application. It is apparent through the repeated detection of illegal workers at Taj Cuisine that both Taj Cuisine Limited and Abdul Monsur have a

total disregard and lack of responsibility for ensuring that persons working at the premises are legitimately available for employment and are clearly failing to promote the licensing objective of the prevention of crime and disorder. The accounts from those found working illegally provides an insight into the poor conditions and pay they were enduring, which effectively traps these persons and can provide exploitation opportunities for serious and organised criminals.

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating under the auspices of a Premise Licence granted by the local authority.

Section 11.24 of the Guidance to the Licensing Act states that reviews do not have to be directly linked or connected with the licensable activities at any premise, although in this case the offences are directly linked to the operation of the premises as a restaurant, selling alcohol and providing late night refreshment and the staff actively involved in these activities.

Section 11.27 states that there is certain criminal activity which should be treated particularly seriously, one of these being knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter. (It is pertinent to note that the inclusion of this in the statutory guidance indicates the offence has now become a particular concern).

Section 11.28 states that where 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.

By paying wages to illegal workers off the record and with no tax or national insurance deductions which are then potentially omitted from an employer's tax report to the HMRC, multiple offences will be committed and become a concern of HMRC.

There are potentially many criminal offences which apply to the employment of illegal workers at this establishment.

It is a legal requirement that employers do not employ illegal workers and do take such measures as are required to prevent it. Employers should demonstrate responsibility and due diligence in determining that the persons they employ are entitled to work. The 15th of February 2019 is the fourth occasion when illegal workers have been found employed at the premises under the control of Taj Cuisine Limited and Abdul Monsur. Thus these are not merely cases of mistakes or lack of knowledge but deliberate ignorance or actual knowledge of the fact.

Illegal workers are prone to exploitation by employers. Illegal workers are unable to declare themselves to local authorities and are unable to claim any form of benefits or financial support because in doing so they would render themselves liable to detention. It is often the case that they are poorly paid and work long hours,

receiving wages below the minimum wage or restricted hours as prescribed in law. They are not afforded the benefit of the protections of United Kingdom employment legislation.

The employing of illegal workers also raises concern with regards to the licensing objective of public safety. Licence holders have a clear responsibility to ensure the safety of all persons using their premises. Employing illegal workers raises potential concerns in areas such as competency and training levels, for example with regards to food preparation levels or hygiene which could have a direct effect on those dining at the location. As illegal workers may not have been subjected to the appropriate immigration checks such persons could pose a risk to the public by means of historical criminal activity which potentially could have been a bar to their lawful entry.

Police Recommendation:

Having considered the available options, Kent Police seek revocation of the premises licence. Allowing the premises to continue to operate with the benefits of a premises licence will merely serve to perpetuate this activity.

2.0 Defence by Taj Cuisine

The above information presented by PC Dan Hunt is deemed to be an accurate record of events and times.

In order to provide the Licensing Hearing Panel (LHR) with a full defence it is important that we furnish the panel with some background to the circumstances and background in which our client ended up in this predicament.

2.1 Background to Taj Cuisine

It has been over 20 years since this restaurant started trading within this newly built part of Walderslade. Twenty years ago Indian Food was at its peak and most people have grown up having a curry on the weekend and has now become part of British Life.

During those years Indian restaurants were run by first and second generation family members that had a passion to carry on the tradition. In order to maintain the standard keep the business alive most chefs were either trained in the UK with new immigrants arriving from Bangladesh and India that filled the positions vacant without too much of a burden.

Fast forward twenty years and Britain has seen an explosion in the culinary palette and you find many cuisines from Turkish, Nepalese, Eastern European to Mexican and many more chain restaurants taking on the mantle of serving food from around the world.

This expansion of the British interest in food is great for the consumer but has had a devastating impact on the multi million pound Indian food business. As variety increases consumers eat out at different places and loyalty for your local Indian is on the decline.

In addition many restaurants established for more than twenty years have lost their client base due to austerity and change in attitudes towards Indian Food.

The public now fixated on wellbeing and good health have also demanded a higher standard of food prepared at Indian restaurants and with lower calories. This change in attitude by the public has automatically put many restaurants out of business and forced others to up their game.

This direct intervention has unfortunately left some restaurants finding it hard to play catch up with the hardest challenge being finding the right the staff.

Whilst Labour was in power it was far simpler to apply for overseas skilled workers and bring over chefs on time limited visa's thus giving the restaurant industry some breathing space in the operations of the spice industry.

Those days have long gone and this skilled visa system is something that is mooted once the country has decided what direction Brexit will take us.

2.2 State of the Business

Taj cuisine is a very successful local Indian restaurant with many awards for its food and customer service. The local Council has itself held many dinners there and has truly become the fabric of the local community.

Taj Cuisine has held many charity events and played an active part in ensuring the business supports its local community in way it can.

It is unfortunate that over the last six to seven years employing the right staff has been a minefield of logistics and a nightmare for many bosses up and down the country.

Third and fourth generation Bangladeshi's, Indian's and Pakistanis have focussed on education and become the Doctors, Lawyers and accountants of the future and the family business is often seen as a thorn in the family dynamics. This responsibility often falls on the son or daughter who didn't quite make it professionally and is often forced to take on the pain of operating an established restaurant but with far less experienced and enthusiastic manpower.

2.3 Staff issues at Taj Cuisine

The recruitment and contractual employment although governed by the Employment Rights Act is not always an easy statute to follow. Staff almost sees the owners as family and when asked to provide ID, Immigration documentation and other paperwork to assess their correct immigration status leads to resentment by those seeking work and is often perceived as sign of disrespect by the staff when the boss asks due to cultural working practices .

This trepidation of asking and seeking information is magnified by the fact that many do supply incorrect and potentially fake paperwork in the first instance thinking that the boss or officials will not come to inspect the business establishments.

When situations like those mentioned by the police in this defence report only supports what the officials have found. Confused restaurant owners with even more perplexed workers that do nothing to help themselves or their employers.

The situation with illegal workers found on a number of occasions is not conducive to the owner of any restaurant wishing to operate an illegal working syndicate but rather him being faced with a real life situation where Britain has decided to baton down the hatches and not let anyone in for love nor money.

The staff that was found to be illegal were not ill-treated nor suggested by the officials that they fall under the modern day Slavery Act. These were instances where the owner is faced with the harsh and difficult reality of operating a busy restaurant with not even people to serve and cook.

This statement does not wish the reader to portray that Abdul Monsur to be innocent of failing to carry out his HR duties but rather drowning in the dilemma of how best to survive with the cards that he has been dealt with.

Having said that Abdul Monsur is an experienced caring and conscientious restaurateur who has operated a very successful business for over twenty years and is not about to plead ignorance for sake of ease.

He admits his shortcomings and understands the gravity of employing illegal staff and failing to carry out stringent checks on potential staff and is very sorry to have failed in his duties but wishes to improve in any way that he can.

2.4 Solutions to Future Recruitment

Instructing a recruitment agency to carry out the initial checks and immigration status checks will take away the burden of initial contact from Abdul Monsur. He is willing to pay the fees incurred as this will save him the burden of liability should the paperwork be incorrect.

This action is a very positive demonstration of how he is able to realise what needs to be done in order to save ten jobs from redundancy should the premises license be revoked.

2.5 Consider the Review and removal of the Designated Premises Supervisor

Abdul Monsur is serious about saving his business and the reputation built up over twenty years and is in agreement to appoint an independent DSP to hold the license in order to adhere to the conditions of that role.

In addition it may also be an option to issue a formal or informal warning on the basis that should there be any further breaches of the licensing responsibilities then revocation may be the only option.

2.6 Sale of the Business

Should the Licensing Hearing Panel not feel it appropriate to issue any of the above options as an immediate solution to the problem then Abdul Monsur will be forced to sell the business to a third party which if left closed will result in the loss of business for the new owner and the sale may fall through without a client base to serve.

It is recommended that should sale be the only option the respected LHP allow a transition period of six weeks for the sale to proceed and the new owner to make the necessary licensing applications in their respective names so that the business does not suffer from closure and loss of clientele.

This would mean the premises and alcohol license remain effective until the sale transaction is concluded through solicitors.

We trust this report demonstrates the integrity and remorse in what has happened by Abdul Monsur and sincerely seeks the support of the LHP to allow one final chance in making good on his promise.

This concludes our defence.

Imperial Law Legal Services Ltd

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