

LICENSING & GENERAL PURPOSES COMMITTEE

GENERAL LICENSING PANEL

29 May 2018

Minutes of the General Licensing Panel held at the Town Hall, Bexhill-on-Sea on Tuesday 29 May 2018 at 10:00am.

There were present:

Members of the General Licensing Panel:

Councillors Lord Ampthill, Mrs S. Hart and C.J. Saint

The Chilli Tree Asian Cuisine

Interested Parties

Premises Licence Holder: Mr Saleh Uddin

Applicant: Melanie Robson, Rother District Council (the Licensing Authority)

Discovery Sargent, Hastings Police

Immigration Officer, Home Office

Immigration Officer, Home Office

Advisory officers: Deputy Legal Services Manager - Wealden & Rother Shared Legal Services, Senior Environmental Health Officer (Licensing) and Democratic Services Officer x2.

Also Present: 11 members of the public.

The Cherry Tree Inn

Interested Parties

Premises Licence Holder: Miss Julie Tindall

Assistant: Mr Richard Chessels

Applicant: Jonathan Hampson, Rother District Council (the Licensing Authority)

Advisory officers: Deputy Legal Services Manager - Wealden & Rother Shared Legal Services, Senior Environmental Health Officer (Licensing), Democratic Services Manager and Democratic Services Officer.

Also Present: 3 members of the public.

LP18/01. **APPOINTMENT OF CHAIRMAN**

Councillor Mrs Hart was duly appointed as Chairman of the Panel for the Chilli Tree Asian Cuisine hearing.

LP18/02. **MINUTES**

The Chairman was authorised to sign the minutes of the meeting of the General Licensing Panel held on 14 December 2016 as a correct record of the proceedings.

LP18/03.
(5.1)

**APPLICATION FOR REVIEW OF PREMISES LICENCE – THE
CHILLI TREE ASIAN CUISINE, BEXHILL-ON-SEA**

Consideration was given to the report of the Executive Director that gave details of an application for a review of the premises licence for The Chilli Tree Asian Cuisine, Bexhill-on-Sea, relating to the failure of the Premises Licence Holder to uphold the ‘prevention of crime and disorder’ licensing objective. There were no representations made.

Prior to the commencement of the hearing, the Deputy Legal Services Manager gave advice to the applicant regarding the grounds on which the licensing review application could be considered.

The Chairman welcomed all who were present and gave general advice in regard to the hearing. The Panel then proceeded to hear the case following the adopted procedure and all parties present at the hearing were invited to address the Panel.

Members heard from the Licensing Authority (the applicant) who presented the case for the review. She outlined that Mr Uddin had demonstrated on two separate occasions, three months apart, that he had failed to carry out the required checks to verify that his employees had a right to reside and appropriate permission to work in the UK. Mr Uddin had also failed to apply for a Child Employment Licence for a child working on his premises.

Members also gave full consideration to the witness statement provided by the Home Immigration Enforcement team.

Members deliberated the application which was determined having regard to the licensing objectives, together with the Guidance under section 182 of the Licensing Act and the local Licensing Policy, and retired to make their decision in private session. Due to the length of time the hearing had taken, it was agreed to notify all parties of the Panel’s decision within 5 working days.

RESOLVED: That the Premises Licence be revoked for the reasons set out within the Decision Notice at Appendix 1.

MEETING ADJOURNED UNTIL 2PM

LP18/04.

APPOINTMENT OF CHAIRMAN

Councillor Saint was duly appointed as Chairman of the Panel for the Cherry Tree Inn, Ticehurst hearing.

LP18/05.
(5.2)

**APPLICATION FOR REVIEW OF PREMISES LICENCE – THE
CHERRY TREE INN, TICEHURST**

Consideration was given to the report of the Executive Director that gave details of an application for a review of the premises licence for The Cherry Tree Inn, Ticehurst, relating to the failure of the Premises Licence Holder to uphold ‘prevention of public nuisance’ licensing objective. There were four representations made from interested

parties, three were in support of the review application and one in support of the premises.

Prior to the commencement of the hearing, the Deputy Legal Services Manager gave advice to the applicant regarding the grounds on which the licensing review application could be considered.

The Chairman welcomed all who were present and gave general advice in regard to the hearing. The Panel then proceeded to hear the case following the adopted procedure and all parties present at the hearing were invited to address the Panel.

Members heard from the Licensing Authority (the applicant) who presented the case for the review. He outlined details of historic complaints of noise from music and patrons shouting and swearing whilst using outdoor spaces. Despite a meeting with licensing officers and relevant advice given to Julie Tindall before she took over and opened the premises in June 2017, within a month there had been a noise complaint. A noise action plan was then drawn up and put in place, but there had been a failure to control the noise from music and restrict the use of outdoor spaces by patrons, in order to reduce their impact on neighbouring residences.

All letters in support of the application and the one letter in support of the premises were given Members' full consideration.

Members deliberated the application which was determined having regard to the licensing objectives, together with the Guidance under section 182 of the Licensing Act and the local Licensing Policy, and retired to make their decision in private session. Due to the length of time the hearing had taken, it was agreed to notify all parties of the Panel's decision within 5 working days.

RESOLVED: That the Premises Licence be amended by the imposition of 7 conditions as set out within the Decision Notice at Appendix 2.

CHAIRMAN

The meeting closed at 2:50pm

GLP180529.lh

Rother District Council
DECISION NO: WK201715686

**GENERAL LICENSING PANEL
DECISION NOTICE**

Date of General Licensing Panel Meeting: 29 May 2018

Venue: Town Hall, Bexhill-on-Sea

Date of Decision: 29 May 2018

**NAME AND ADDRESS OF
PREMISES:**

The Chilli Tree Asian Cuisine, 1 King Offa Way, Bexhill-on-Sea

NAME(S) OF APPLICANT:

Rother District Council (the Licensing Authority)

REASON(S) FOR REPORT:

The report had been made on the grounds of the failure of the Premises Licence Holder to uphold the 'prevention of crime and disorder' and the 'protection of children from harm' licensing objectives.

DECISION MADE:

The premises licence be revoked.

DECISION MADE AND REASONS FOR IT:

The Members were asked to consider a Review Application from The Licensing Authority for the Premises Licence for The Chilli Tree Asian Cuisine, 1 King Offa Way, Bexhill on Sea. The licence is held by The Chilli Tree Asian Cuisine Ltd and the sole Director and current Designated Premises Supervisor is Mr Saleh Uddin. The Members had been provided with a large bundle of evidence that included extensive Police and Immigration Service statements and information concerning enforcement inspections undertaken at the premises between October 2017 and January 2018. In considering the case the Members also had regard to the Council's Statement of Licensing Policy and the Secretary of State's S.182 Guidance, in particular the section on Reviews.

Prior to the hearing itself, the Premises Licence Holder (PLH) Mr Saleh Uddin had been formally requested, by notice, to supply copies of any evidence he wished to place before the Members at the hearing at least three working days prior to the hearing. Additionally he was required, by notice, to supply the names and relevance of any witnesses he intended to present at the hearing. He did not respond to these notices prior to the hearing.

On the morning of the hearing the PLH attended with a bundle of documents that he wished the Members to consider. He stated he had delivered one copy to one of the Members, but not the other two Members, nor had the Council itself received any copies. The Member on whom he said it had been delivered had not received the papers in readiness for the hearing. He was informed that at such late notice these documents could only be permitted with the consent of all the parties to the hearing. These document included guidance on the conduct of members, the codes of practice for Immigration Officers inspecting premises, The House of Lords Select

Committee Report on the work of the Immigration Service, extracts from the House of Lords library on Separation of Powers, press cuttings relating to individuals not connected to the premises under review, and matters relating to taxi licensing on the fit and properness of applicants. The Members considered the material and decided that none of the material was relevant for the detailed purposes of the review hearing.

In making their application the Licensing Authority provided details of two specific operations that had taken place at the premises. The first operation led by Sussex Police took place on 18 October 2017 as a targeted inspection under 'Operation Discovery'. This Team was set up to tackle Modern Slavery by identifying premises that were suspected of employing illegal workers under immigration laws. Where concerns were identified at premises, the Police shared the intelligence gathered from these operations with supporting agencies, including licensing authorities, in order to facilitate enforcement action to take away the venues that facilitated illegal workers. The ethos of the operation was very much to break the chain of trafficking and prevent establishments harbouring modern slavery. The initial operation at the premises found three illegal immigrants working at the premises. Statements taken at the time by Sussex Police record the PLH confirming that all three worked for him, a fact he later attempted to reverse at the hearing. The statements also confirmed that some were being paid, others were not but were being paid their legal costs in their immigration cases, others had their student fees paid; and that ID documents were said, by the immigrant workers, to be held by the PLH.

Given the results of the Police operation the Home Office Immigration Service arranged to re-inspect the premises on 27 January 2018. Evidence provided by the immigration officers in statements, and in person at the hearing, confirmed that two illegal immigrants were found to be working at the premises. One of the two immigrants was the same individual found working in October. Documentation seen by the officers from the two clearly stated that they were not permitted to work in the UK. When questioned by Immigration Officers they stated their documentation had not been checked by the PLH. It was stated by the officers that the Home Office had issued a Penalty Notice against the PLH for £10,000 for the offences but this was subject to a challenge by the PLH.

Also present at this inspection was a Licensing Officer from the Council who reported that behind the bar of the premises was a school girl who was 15 years old. Subsequent checks with East Sussex County Council established that no Child Employment Licence had been obtained for the employment of the child as required by The Children and Young Persons Act 1933. It was stated that the PLH obtained the licence some six weeks later. Members were given a sense that he thought the only legislation that applied to his whole business was the LA2003 and had little regard for other relevant legislation.

The Members asked a series of questions of the Police and Immigration Officers and the Council officer to clarify matters, and the PLH was invited to ask any questions of these officers to clarify any issues, but he said he had no questions to ask.

The Members were then addressed by the PLH. In his submissions he sought to discredit the two inspections raising questions about the legal authority to enter his premises citing several of the documents that the parties had refused to permit at the beginning of the hearing. He disputed that the 15 year old girl was committing an offence under the Licensing Act 2003, despite there being no allegation in the review application that she was, and he refused to accept that the complaint of the Licensing Authority was that he had failed to obtain a licence for her to work. He

stated that the 2003 Act did not require her to have a licence as justification for not obtaining the licence. Later in his submissions he did acknowledge he had not been aware he needed such a licence and accepted now he should have done. He stated he had done everything he could afterwards to obtain the licence, details of which were within the report stating he had obtained the licence nearly 6 weeks after the second inspection.

In relation to the serious nature of reports of illegal workers being found at the premises, in summary he stated they were not working at the premises and that they were either living there or were students. He stated he supported their studies and that he had never taken custody of ID documents, despite the statements within the report. He insisted he carried out appropriate checks on immigration documents and that in these five cases they had not shown him all their documents, suggesting they had withheld those documents that suggested they had no right to work. He stated that statements taken by the Police and Immigration Officers could have been inaccurate as the spoken English of the individuals was poor. The Police confirmed that in questioning workers the Police used simple plain English, and where there was any doubt that there may be difficulty in understanding they used an interpretation service to translate the questions into the workers Mother tongue. The PLH again repeated that the documents he had seen for the individuals had all been in order despite what was set out in the Police and Immigration evidence.

The Members asked a series of questions of the PLH to understand the management arrangements of the premises and to understand the process of checks that were carried out. The PLH was asked whether he had made any changes since the inspections and he stated that from now on he would look to changing the management of the process. The Members repeated what changes had been put in place already but the PLH could not state any changes had been made. He was asked what he paid his staff. He stated he paid his waitresses £5 per hour but could not state what he paid his kitchen staff as he claimed he supported their studies and travel and therefore there was no hourly rate.

The Members were asked to consider whether on the evidence they had read and heard at the hearing, they considered that the licensing objectives were being undermined by the premises, and if so, what appropriate actions should be considered. The Members were satisfied on balance that the evidence provided by Police, Immigration and Council Officers was compelling in depicting a premises that had little, if any, solid management to ensure that the licensing objectives were being upheld. They were satisfied on balance that illegal workers had been discovered at the premises on two occasions, and were alarmed to be told that no measures had been put in place after the initial inspection in October 2017 to prevent further breaches. The fact that one individual was caught working at the premises at both inspections demonstrated a total disregard for the immigration process and seriously undermined the crime and disorder objective. The Members were satisfied that the PLH's account of the period between October 17 and January 18 was not reliable and statements he made to the Members at the hearing contradicted statements he had made at the time of the inspections. The Members found his statements unreliable and the lack of any relevant documented evidence of any changes to the culture of his premises was disturbing given the serious nature of the case before him. The Members were satisfied that information on simple immigration checks was easily accessible on the Home Office website. They were satisfied that the PLH ability to use the web had been demonstrated by the volume of material he had downloaded to bring to the hearing and that there was no excuse for not carrying out the basic checks required by the immigration legislation.

On the matter of the Child Employment Licence, the Members were satisfied that information on how to apply was easily accessible through the County Council and that ignorance of the safety measure that this licensing regime sought to uphold had been undermined by the inaction of the PLH. Despite being advised by officers to obtain a licence it still took the PLH 6 weeks to obtain the licence. The Members were satisfied that such ignorance and delay in applying for the required licence had undermined the licensing objective of protecting children from harm.

The Members were satisfied these failings were attributable to the poor management by the PLH. They were satisfied on balance that the PLH had ignored advice from Police, Immigration and Council officers that were intended to help the PLH to operate within the perimeters of the licencing objectives. The Members were equally satisfied that the PLH appeared to be in total denial of the offences reported within the report and were astounded at his apparent belief that overwhelming evidence could simply be dismissed without any supported evidence to challenge the statements. This attitude caused Members to have serious concerns at the PLH ability to uphold the Licensing Objectives owing to his refusal to accept any wrongdoing on his part. The Members considered whether the imposition of further conditions or the imposition of a period of suspension could achieve a change in the mind-set and culture of the premises and the PLH, but they were satisfied on the evidence they had heard and seen at the hearing itself, that the objectives were likely to be undermined in the future. Accordingly the Members accepted on balance that the appropriate decision was to revoke the premises licence. The Members were satisfied that this decision was the only appropriate sanction in this case and that in addition it would act as a deterrent to any other premises in the area who may be considering employing immigrants with no right to work.

A written or electronic copy of this Notice will be publicly available to all parties, and published on the Council's website.

Rother District Council
 DECISION NO: WK201800012

GENERAL LICENSING PANEL DECISION NOTICE

Date of General Licensing Panel Meeting: 29 May 2018

Venue: Town Hall, Bexhill-on-Sea

Date of Decision: 29 May 2018

NAME AND ADDRESS OF PREMISES:	The Cherry Tree Inn, Dale Hill, Ticehurst
NAME(S) OF APPLICANT:	Rother District Council (the Licensing Authority)
REASON(S) FOR REPORT:	The report had been made on the grounds of the failure of the Premises Licence Holder to uphold the 'prevention of public nuisance' licensing objective.
DECISION MADE:	That seven conditions be added to the premises licence.

DECISION MADE AND REASONS FOR IT:

The Members were asked to consider a Review Application from The Environmental Health Division of the Council for the Premises Licence for The Cherry Tree Inn, Dale Hill, Ticehurst. The Premises Licence is held by The Cherry Tree Inn Ltd and the sole Director and current Designated Premises Supervisor is Julie Tindall (PLH). The Members had been provided with a bundle of evidence that included information concerning enforcement measures undertaken at the premises between June 2017 and October 2017. In considering the case the Members also had regard to the Council's Statement of Licensing Policy and the Secretary of State's S.182 Guidance, in particular the section on Reviews.

In making their application the Environmental Health Service (EHS) provided the Members with a chronology of activity relating to advice and meetings that had taken place in the early part of summer 2017. It was said that the premises had a history of complaints across a number of issues prior to the re-opening of the Inn by the PLH. Officers had sought to assist the PLH by making suggestions about the use of the raised decked area at the rear end of the garden given its' close proximity (10 metres) from the nearest residential property. When asked by Members it was made clear that complaints about the premises, under the control of new PLH, had been made prior to the business opening and it was suggested that neighbours had a heightened sensitivity to the premises given its past history.

The officer for the EHS detailed a series of complaints that followed the opening, predominantly concerning the use of the decked area. Complaints led to the premises being placed on Noise Patrol Monitoring and officers visited and witnessed unacceptable loud levels of bad language and raucous behaviour by patrons that appeared to be unchallenged by the management. Noise recording equipment confirmed that noise levels were considered to be a nuisance within the licensing objectives. The EHS had attempted to work with the PLH to set up an Action Plan to

control patrons so as not to cause a nuisance but that the PLH had been reluctant to accept all the proposed modifications to her licence, in particular restrictions to the use of the decked area in the evenings. Complaints had persisted with little evidence of control by the PLH and so the EHS believed their only option was to call for the review.

The Members asked a series of questions about the premises and ascertained that complaints had not been made during the 2018 season, in particular over recent weeks following periods of hot weather when the rear garden was being used.

The PLH addressed the Members and stated that she felt she had not been given sufficient opportunity to understand and ascertain her clientele following the opening. She had realised over time that certain demographics within her clientele had been unruly, and that she had taken effective measures to control and ban some of those people from the premises. Initially on opening she had attempted to work alone and this had hindered her ability to supervise the use of the decking effectively. She stated she had now employed additional staff to assist, and that the garden was now monitored more closely to prevent nuisance. Staff regularly patrolled the garden when serving food until 21.30 and beyond that time staff checked the area every 20 minutes. It was stated that she had willingly accepted the suggested conditions set out in the report at 2-7 but that accepting a 21.30 closure of the garden would have a dramatic effect upon her business. She gave details of the enquiries she had explored to provide an acoustic fence to the rear of the garden, but stated the assessment alone was £1,500 and that projected costings for a fence would be £3-5,000, a cost she simply could not justify following advice given to her suggesting it would not abate the nuisance. She emphasised that she had accepted the proposed conditions 2-7 but could not agree to condition 1 as proposed. She stated she was confident her management measures to control poor behaviour and the establishment of her regular clientele after the initial 12 month period since opening, would ensure that no further problems would be encountered and that she could uphold the licensing objectives.

The Members were asked to consider whether on the evidence they had read and heard at the hearing, they considered that the licensing objectives were being undermined by the premises, and if so, what appropriate actions should be considered to ensure that the licensing objectives were being upheld. The Members were satisfied on balance that the evidence of nuisance that had existed during the summer of 2017 was undisputable. It was clear within the application and from evidence provided by the Officer, Mr Hampson, who had witnessed the level of noise suffered by local residents. It was accepted by Members that some of those residents may have been predisposed to complaining about the noise levels from the premises, but nevertheless from the evidence provided, the Members were satisfied the licensing objective of The Prevention of Public Nuisance had been undermined.

The Members accepted that the PLH had needed a period of time to establish her regular clientele, and that having been afforded that time had now put in place measures to ameliorate the recurrent nuisance. The Members were reassured to hear that the PLH had accepted the proposed conditions set out at 2-7 in the report, and then considered what actions they should consider in taking appropriate measures to restrict the use of the outside garden area, as set out within proposed condition 1 that was in dispute between the EHS and the PLH. The Members believed on balance that the absence of any recent complaints from residents supported the PLH's view that her staff were controlling the situation and agreed that no restriction until 22.30 should be imposed during busy weekend periods. They

considered it was appropriate to restrict the area during the working week and imposed a restriction of 22.00 Sunday – Thursday, as the PLH had stated she would be unlikely to be open at those times during the week. The Members were satisfied that the imposition of the 7 conditions to the licence would ensure that the licensing objective of Prevention of Public Nuisance would be upheld.

The following conditions be added to the licence:

1. Prohibit use of the indicated area in plan A after 22:30 Friday- Saturday; and 22.00 Sunday - Thursday, except for the immediate access and egress of the public from the premises.
2. An external smoking shelter shall be created and utilized, which is screened from neighbours by buildings, erection of walls or close-boarded fences to reduce disturbance to neighbours. Before erecting the smoking shelter the premises licence holder should contact the Environmental Health Department for guidance on its construction and location. The premises licence holder should contact the Planning Authority to ascertain if the structure requires planning permission.
3. All doors and windows shall be kept closed, except for the immediate access and egress of the public and staff, whilst regulated entertainment is in progress.
4. There shall be no regulated entertainment inside of the premises after 23:00.
5. There shall be no outdoor regulated entertainment after 21:30.
6. There shall be prominent, clear and legible notices displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and the area quietly.
7. There shall be regular checks of outside areas and active encouragement and enforcement of good behaviour.

A written or electronic copy of this Notice will be publicly available to all parties, and published on the Council's website.