

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **LICENCING SUB COMMITTEE** held on 5 September 2023 at 10.00 am

Present

Councillors L G J Kennedy (Chairman)
J Cairney and A Cuddy

Also Present Councillor(s) Cllr D Broom

Present

Officer(s): Deborah Sharpley (Legal Services Solicitor), Harriet Said (Team Leader (Commercial), Public Health), Alan Drake (Specialist Lead (Licensing)), Philip White (Specialist Licensing Assistant), Amy Sully (Specialist Officer) and Angie Howell (Member Services Officer)

1 Apologies

No apologies were received.

2 Election of Chairman

Cllr L Kennedy was duly elected Chairman of the Sub Committee.

3 Determination of a Premises Licence Application for Belluno Italian Restaurant, Newton St Cyres, EX5 5DA

An application had been received from the Home Office (Immigration Enforcement) for a premises licence to be reviewed under the Licensing Act 2003. The premises was Belluno Italian Restaurant, Newton St Cyres, Exeter, Devon, EX5 5DA (Belluno).

The Chairman introduced the members of the Sub Committee and the officers present and explained the process of the Hearing.

Cllr J Cairney declared that he had a restaurant in Crediton and that he had eaten in Belluno several times.

Cllr A Cuddy declared he also had a license for several bars.

The Licensing Sub Committee agreed that the meeting should be heard in public session.

The Licensing Specialist Lead outlined the contents of the report as follows:-

- The licence was obtained in 2018 by the licence holder of the premises, Kirton Ventures Limited, who owned the freehold and leased the premises to Belluno Bar and Grill Limited.

- Mr Haqif Derti was the director of Belluno Bar and Grill Limited and the Designated Premises Supervisor (DPS) since August 2018.
- The statutory guidance specified that licensing authorities should look to the police as the main source of advice on crime and disorder but the police had indicated that they had no concerns regarding the premises.
- An application to review the premises licence was received by the Council on 14 June 2023.
- The supporting documents submitted by the Home Office (Immigration Enforcement) contained records made by Immigration Officers arising from an enforcement visit at Belluno conducted on 9 December 2022.
- The application to review was copied to all of the responsible authorities and no representations were received from those.
- The Licensing Act 2003 (the Act) allowed other persons to make representations – none had been made.
- The Council had received three letters from the public in response to the process of which two were in support of the application. They had not been accepted as relevant representations as they did not relate to the crime and disorder licensing objective for which the review had been called. One representation was negative but the person wished to remain anonymous and therefore it was not included.
- The licence holder's legal representative, Isca Legal LLP, had responded to the application on their and Mr Derti's behalf and their submissions and supporting documents were included with the report.
- During the period of the premises licence to date there were no concerns of there having been any crime and disorder at the premises.
- The Sub Committee was advised that the following steps may be taken:-
 - i) Do nothing
 - ii) Issue a warning
 - iii) Modify the conditions of the premises licence
 - iv) Suspend the licence for a period not exceeding three months
 - v) Remove the Designated Premises Supervisor
 - vi) Revoke the licence

In response to the Licensing Specialist Lead's summary, the legal representative from Isca Legal LLP asked the Sub Committee to note that an important change had been introduced by Belluno in the way that they recruited staff. This had now been outsourced to a firm of accountants.

The officer for the Home Office (Applicant) informed the Sub Committee of the following:-

- On the 9 December 2022 Immigration Officers conducted an intelligence led investigation at Belluno.
- Nine staff were encountered, five of which had no permission to work there (i.e. 67% of the workforce) and four arrests were made.

- Since 1997 all employers in the UK should conduct simple Right to Work checks. If an employer was found to be employing someone illegally the employer may face sanctions of up to £20,000 per worker (civil penalty), a prison sentence (for criminal offences), close of the business, not being able to sponsor immigrants to the UK, imposition of a compliance order, seizure of earnings, disqualification of a director and/or review and revocation of their licence.
- In July 2023 the licensee was issued a civil penalty of £40,000.
- The owner did not dispute the civil penalty and has accepted employing the workers and had overlooked the law.
- The officer referred the Sub Committee to the Home Office section 182 guidance, specifically at paragraphs 11.27 and 11.28. The latter paragraph confirmed that in these circumstances revocation of the licence should be seriously considered.
- Mr Derti had made woefully inadequate checks when employing persons. In addition, one worker claimed not to have been paid except by receiving free food and another claimed not to be working there, but was found to be on the staff rotas.
- National Insurance and Tax would not have been paid which allowed such employers to pay significantly under the minimum wage. This gave them unfair advantage over other employers.
- Illegal employees were often paid below the minimum wage and were vulnerable to exploitation.
- A firm response was required to ensure that the licence holder did not continue with this and further conditions would not be enough. It was expected that revoking of the licence should be immediate as the employment practices were of concern.

The following questions/statements were raised:-

- Isca Legal LLP - As there were conflicting accounts of what happened on the 9 December 2022, had further efforts been made to balance the events of the evening?
- Also with regard to people working below the minimum wage and outside of PAYE, had any steps been taken to follow this up with the appropriate authorities?

The officer for the Home Office confirmed that his team only dealt with front line workers and did not carry out investigations post-enforcement action. That was for the Civil Penalty Compliance Team (CPCT) and others; his team were the evidence gatherers. They put the evidence into the system and had nothing to do with what happened after that. Here it had been decided to impose the £40,000 civil penalty; this had not been appealed and the first instalment was due.

- Mr Derti confirmed that he knew how to undertake Rights to Work checks and other members of staff were registered. However some of the staff that had been working there that night had only started one or two days beforehand and were working trial shifts. He had not registered them immediately; and one of the staff had given a right to work share code and her application was pending.

On the evening of the enforcement action he had opened the door and immigration officers ran in from the front and back of Belluno. The staff were scared which is why they ran away.

- The Licensing Specialist Lead asked who had made the application to review the Licence. The officer for the Home Office confirmed his team had received intelligence that there was an illegal person working in the kitchen and made the decision to review following the enforcement action at Belluno. They had found other people working there that should not have been and therefore this had triggered a licence review. After the December 2022 enforcement action the matter was reported to the CPRT (a gatekeeping body like the Crown Prosecution Service) who make the decision about further action to be taken. In this case they had chosen a civil penalty.
- Cllr A Cuddy asked whether the person the Home Office had expected to find in the kitchen (working as a chef) was found there. The officer confirmed that they were.

The premises licence holder's representative, informed the Sub Committee of the following:-

- The Sub Committee was not a court for the purposes of today's hearing. The Home Office submissions were not evidence as a lawyer would require; some were anecdotal – they were no more than generalised submissions. The submissions were not relevant to what was taking place now, which was something that the Sub Committee should take into account. The evidence relied on by the Home Office was given on the day in the heat of the 'raid'. Belluno had made significant changes to the way in which they employed staff and this had now been outsourced to their accountants. The issues of 9 December had been addressed and those procedures meant that a recurrence was less likely.
- The Licensing Specialist Lead had advised the Sub Committee of all of the options available to it. The Sub Committee should not, in considering the seriousness of the matter, take into account matters that were not relevant under the Act. In addition, the Council's constitution stated that the decision should be reasonable and proportionate in respect of the objective sought.
- In considering how serious the matter was the Sub Committee should bear in mind that no criminal prosecutions had been launched and those detained on 9 December had been released. There had not been any follow up in relation to the apparent issues of concern raised following the raid. No other Responsible Authorities had responded in any adverse way.
- The Sub Committee should, when reaching its decision, balance responsive action against other considerations including cost. If Belluno were to close this would be a valuable asset lost to the community. Belluno would inevitably go into liquidation and be unable to pay the balance of the civil penalty imposed.

- The Sub Committee should decide the matter in respect of the licensing objectives. That was the prevention of crime in relation to the premises, not as a deterrent to others. He stated that the Home Office policy and punishment were not licensing objectives under the Act, and should be disregarded. The Sub Committee should have regard to what was necessary (as a reasonable minimum) to deal with the issue of workers. This was now out of Mr Derti's hands and into those of professionals and the Sub Committee should feel comfortable that the issues were not likely to occur. Mr Derti valued his business and had accepted the civil penalty. The two directors did not attend today as they were not present on 9 December. They hold regular, approximately monthly, meetings at the restaurant with Mr Derti to review the conduct of the business. These were informal meetings through which supervision was effected.

Mr Haqif Derti informed the Sub Committee of the following:-

- There had been a fight in Exeter in November 2022. A certain person (J) who was working for Mr Derti at that time was involved with the chef the Home Office said they were looking for at Belluno. The Home Office had gone to J's house to look for the chef. The chef, who came from the same country as Mr Derti, asked if they could live upstairs at Belluno. The chef was afraid to return to return to J's house.

The following questions/statements were raised:-

- The officer from the Home Office advised that he did not want to go into individual immigration status of any individuals, but that they had not expected to find J at Belluno; it was thought that J had left the country.
- The premises licence holder's representative stated that the share code was something a worker could share with the employer who could check to see if the person could work. He also understood however that it was not as 'black and white' as that though.
- The officer from the Home Office indicated that there were nuances with the share code; that it afforded a period of validity. If a person had the right to work they would not appear on the civil penalty. He also indicated that he, as an employer, would not have been satisfied with a screenshot of a share code, but would have wanted a PDF. He stated that at the time the share code was shared it would have been valid.
- The Licensing Specialist Lead asked whether the civil penalty related to one person or many. The officer from the Home Office indicated that in this matter four persons were named on the civil penalty.
- The officer from the Home Office then sought to put a matter to Mr Derti. The Council's Legal Services representative indicated that the matter was not previously disclosed to any of the parties prior to this hearing and did not relate to this premises or review.
- The Chairman noted that it was not mentioned in any of the papers before the Sub Committee.

- Cllr J Cairney asked Mr Derti whether he had his own licence and whether he had received training as a DPS and if it was up-to-date. Mr Derti replied that he had a licence, had not received any training but that he had always carried out the employment checks. However, this had now been passed to their accountants who also dealt with the restaurant's other paperwork/payroll.
- Cllr A Cuddy asked Mr Derti who carried out the employee checks prior to Trek Accounting. Mr Derti stated that the accountants always did the VAT and he had done the employee checks. He also explained that the employees had only been working to help over the Christmas period and that employment checks would have been made in January. He explained that if rotas were checked the names of the staff working in December you would not see the same names working earlier on in the year i.e. August to November. Those staff no longer worked there except for one employee who had been working there since September 2022, but she did have a Right to Work permit.

Cllr A Cuddy also enquired as to the involvement of the licence holder, Kirton Ventures Limited, in the business of Belluno. Mr Derti confirmed the informal meetings with the licence holder but indicated that all business was done by him.

- The Chairman stated that it was the responsibility of the licence holder to keep the DPS trained and asked what training had Mr Derti done. Mr Derti replied that he had done no training.
- The officer from the Home Office indicated that he did not believe that DPS training covered off Right to Work checks, but focused on the licensing aspects of the business.

The Chairman then invited all parties to summarise:-

- The officer for the Home Office informed the Sub Committee that all enforcement visits were carried out on the back of intelligence. During the visit on 9 December the chef tried to evade arrest and two persons were working behind the bar. Four arrests were made and staff had made admissions of working - some for cash and some for food only; and that checks were not carried out. Workers paid in this way did not contribute to the revenue of the UK and were defrauding the public purse. The workers were open to exploitation from their employers as often they were not paid the minimum wage, had no breaks, pension rights or paid holiday and undertook extended trial shifts. A civil penalty of £40,000 had been issued and a payment plan had been put in place. The DPS was aware of this and it was therefore submitted that the licence should be revoked as he has employed illegal workers.
- The premises licence holder's representative informed the Sub Committee that they needed to consider whether after 9 December 2022 there was a risk of the issue recurring.

- A heavy civil penalty had been received and the working practices had been changed regarding employment. Mr Derti was committed to retaining his business and that lessons had been learnt and proper procedures were now in place.
- The Licensing Specialist Lead reminded the Sub Committee that this was a review under the crime and disorder licensing objective. There had been no prosecutions considered for the evidence found on the night; but civil sanctions had been issued and accepted. The Sub Committee were reminded of the following options available:-
 - i) Do nothing
 - ii) Issue a warning
 - iii) Modify the conditions of the premises licence
 - iv) Suspend the licence for a period not exceeding three months
 - v) Remove the Designated Premises Supervisor
 - vi) Revoke the licence

The premises licence holder's representative asked the Sub Committee whether it might wish to discuss suitable conditions before retiring. The Chairman advised that there was no need to do so at this stage.

Members of the Sub Committee then retired to reach a decision in private accompanied by the Council's representatives from Legal and Member Services.

The Sub Committee returned and the Chairman made the following statement:-

The Sub Committee has found on a balance of probabilities that illegal working took place at Belluno Italian Restaurant in December 2022.

The Sub Committee: -

1. Found that the person responsible for this breach of immigration law was the designated premises supervisor and owner of Belluno, Haqif Derti. Mr Derti had explained in the hearing that he was the person responsible for undertaking the employee checks at that time, and also undertook trial employment for some persons and had not made any checks or kept proper records. This indicated poor practice and management by Mr Derti resulting in the problems which had led to the review.
2. Noted that since January 2023 Trek Accountants Ltd has taken on the responsibility of undertaking these employee checks (in addition to other services it provided to Belluno).
3. Noted that the informal meetings between Kirton Ventures Limited and Mr Derti did not prevent this illegal working from taking place.

The Sub Committee felt that that licence holder should perhaps be more closely involved in monitoring what happens on their licensed premises.

It was therefore **RESOLVED** that:-

1. Haqif Derti should be removed as Designated Premises Supervisor forthwith as the cause of the illegal working directly related to his poor management decisions.
2. In all of the circumstances of this case, where illegal workers were working at the premises, including selling alcohol in contravention of the licence, it was necessary as means of deterring the licence holder from allowing the problems that gave rise to the review, to suspend the licence for the period in October 2023 from 12:00 noon on a Friday until 12:00 noon on the following Monday.

It was clarified that the date of the weekend in question is to be decided by the licence holder, who must notify the Council's Licensing Team of the date once decided.

The Legal Representative then outlined the rights of appeal to the Magistrates Court and that formal notification would be sent in writing to all parties.

(The meeting ended at 2.05 pm)

CHAIRMAN