

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Spennymoor - Council Offices, Spennymoor on **Tuesday 5 February 2019 at 10.00 am**

Present:

Councillor P Crathorne (Chair)

Members of the Committee:

Councillors P Atkinson and L Brown

Also Present:

Councillor D Brown

Yvonne Raine – Senior Licensing Officer

Catherine Hazell – Solicitor (DCC)

Laura Cloney – Licensing Enforcement Team Leader

Stephen Mooney – Force Solicitor

Sgt Caroline Dickenson

DC Dean Haythornthwaite

Mark Bryden – Immigration Officer

Mark Thorley – Immigration Officer

Mrs Khan – other person

Chris Morrison – legal representative for Lebaneat

Ahmed Sayed – Lebaneat

Oana Cotoi - Lebaneat

1 Apologies for Absence

Apologies for absence were received from Councillor C Carr, J Maitland and M Wilson.

2 Substitute Members

Councillor Crathorne substituted for Councillor Carr and Councillor L Brown substituted for Councillor Maitland.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes

The Minutes of the meeting held on 16 October 2018 were agreed as a correct record and were signed by the Chair.

With the agreement of all parties items numbered 5, 6, 7 and 8 on the Agenda were considered together.

5 Lebaneat, 47 North Bailey, Durham and Lebaneat Wrap House, First Floor, 69 Claypath, Durham

The Sub-Committee considered the following reports of the Senior Licensing Officer:

Application for the Review of a Premises Licence – Lebaneat, 47 North Bailey, Durham

Application for the Review of a Premises Licence – Lebaneat Wrap House, First Floor, 69 Claypath, Durham

Application to Transfer a Premises Licence – Lebaneat Wrap House, First Floor, 69 Claypath, Durham

Application to Vary Premises Licence to specify an individual as Designated Premises Supervisor – Lebaneat Wrap House, First Floor, 69 Claypath, Durham

Members were informed that since the reports had been published additional information had been received from the Licence Holder which related to all four applications.

The Licence Holder's representative had also presented a statement from Mr Abd El Hamid in connection with the application for the transfer of the Premises Licence at Lebaneat Wrap House.

Mr Mooney, Force Solicitor on behalf of the Applicants for the review applications, and objectors in respect of the applications to transfer the Premises Licence and to vary the DPS, was invited to address the Sub-Committee.

Mr Mooney explained that the Police concerns mainly related to the employment of persons disqualified to work in the UK. He referred Members to the visit to both premises on 2 August 2018 when Home Office Immigration Enforcement Officers encountered two people suspected of working illegally. Details of the visit were included in the Bundle of Evidence. The Licence Holder Mr Sayed had been issued with referral notices and fined, although he understood that Mr Sayed may appeal.

This was a very serious matter; Section 182 Guidance prescribed certain criminal activity which should be treated particularly seriously, including the employment of a person disqualified from working by reason of their immigration status in the UK, which the Guidance expected that revocation should be seriously considered. This company was making a profit and Mr Sayed held a privileged position. The people he was employing were being used, and paid very little or nothing at all. One of the male's found working during the visit now had permission to work in the UK but this post-dated 2 August 2018. At the time of the visit the male had no documentation

and Mr Sayed had said that he was working on a trial shift but the Police believed that this was an attempt to bypass rules. The male had attempted to hide his chef's clothing and was prevented from answering when asked if he was getting paid for his work. The staff were told to stay quiet rather than assist the Officers during the visit. Mr Sayed had said that his staff were employed by an Agency Sayed Trading Ltd which he had nothing to do with but this was not the case. Referring to the meeting with the Police on 29 November 2018 Mr Sayed had challenged the view that this was a serious matter. If this was Mr Sayed's view, Mr Mooney asked how often this had occurred in the past.

Turning to the sale of alcohol at the Wrap House it had been established that the premises did not hold a Premises Licence between 2016 and 2018. Mr Sayed had said that licensable activities were not taking place at the premises but Mr Mooney referred Members to the statement of PCSO Carey which confirmed that alcohol was on display and this was demonstrated with photographs of the bar area. Mr Sayed had said that he had thought that customers could bring their own alcohol and had used the off-sales from the restaurant as a means of attempting to bypass the licensing regime.

The Police believed that Mr Sayed had made applications to transfer the Premises Licence and to vary the DPS with interim effect as a means of stretching the licensing legislation. It was difficult to work with an operator who looked for loopholes in the law

In conclusion the Police considered that the applications to transfer the Premises Licence and to vary the DPS in respect of Lebaneat Wrap House should be rejected and the Premises Licences for both the Wrap House and Restaurant should be revoked. The other options available to the Sub-Committee would have little effect as there had been such clear disregard of the licensing law.

All parties were invited to ask questions of the Police. The Licence Holder's representative, Mr Morrison, asked a number of questions of Sgt Dickenson.

Sgt Dickenson confirmed that the social media posts that did not refer to the Wrap House could not be relied upon.

In terms of any crime and disorder relating to the premises, Sgt Dickenson confirmed that there had been no reports relating to either the Restaurant or the Wrap House. She was unable to comment about incidents at other premises in the City without access to the Police system. There were around 300 licensed premises in the City, the majority of which did not cause problems, although acknowledged that there were incidents of drunk and disorderly behaviour, and a number of premises had lost their licences due to this.

Referring to the visits to the premises, Sgt Dickenson confirmed that the licensing conditions that had not been met during the visit in November 2018 were being adhered to at the visit made on 3 January 2019. She confirmed that this included the CCTV which at the visit on 16 November 2018 was being kept for 14 days, instead of the 28 days required by the licensing conditions.

At this point the Chair requested a short adjournment to allow Members to read the additional information provided by the Licence Holder.

Upon re-convening, Mr Morrison asked Sgt Dickenson about the retainer agreement and staff handbook included in the additional bundle. The Sgt advised that the handbook post-dated the issues that had given rise to the applications. She confirmed that she would expect all premises to have a staff handbook, and that their employees were entitled to work in the UK with the correct documentation. The policies had only recently been introduced and not seen in operation.

The Chair of the Sub-Committee stated that these questions related to the documents produced by the Licence Holder, and not evidence contained in Sgt Dickenson's statement.

Mr Morrison then asked questions of DC Haythornthwaite regarding issues between the owner of the neighbouring premises and Mr Sayed. The Sub-Committee advised that these matters should be dealt with in Mr Morrison's representations.

Mark Bryden and Mark Thorley, Immigration Officers were invited to address the Sub-Committee. After briefly outlining their responsibilities, Mr Bryden stated that the role of the Premises Licence Holder should not be underestimated which came with a statutory obligation to fulfil the licensing objectives. Mr Bryden addressed the Sub-Committee regarding the visit of 2 August 2018 as detailed in their statements contained in the Bundle of Evidence, and confirmed that Mr Sayed had been fined for employing workers not entitled to work in the UK. Mr Sayed had claimed that all staff details were held at the company's Head Office in Beirut.

Two previous visits had been made to the premises in 2016. On 1 April 2016, Officers had encountered an Egyptian male working illegally and during a second visit on 3 November 2016 three males were apprehended, one being the Egyptian male found on the earlier visit. This was despite Mr Sayed being advised of his requirements following 1 April 2016. The other two workers had permission to work in the UK. The Premises Licence Holder was not robust and did not take the licensing objectives seriously. During the visit in August 2018 Mr Sayed had obstructed Officers who were trying to carry out their duties. Employing illegal workers encouraged people to take risks to enter the UK dangerously and left them vulnerable. It also had an impact on the wages of legal workers and led to exploitation of working conditions. Employers were required to carry out simple checks on the documentation provided by employees, and to carry out repeat checks.

Councillor L Brown asked what advice Mr Sayed had been given following the visit on 1 April 2016 and was advised that he had been informed of the rules regarding relevant checks and where to find them. Action had been considered following the visits in 2016 but Officers had felt that there was not enough evidence to apply a fine at that time.

Mr Bryden responded to questions from Mr Morrison. He advised that he expected a robust Premises Licence Holder to conduct checks on anyone they employed to ensure they had the correct documentation to work in the UK and to check when

visas were due to expire. With regard to appropriate documentation he advised that a NI number was not proof of identity or of a right to work. Some illegal workers did hold NI numbers; over-stayers could retain their NI number but would not have a right to work. Guidance was available on-line and right to work checks could also be carried out directly with the Home Office. Mr Morrison asked if a safeguard against exploitation of workers would be a robust internal employment procedure and Mr Bryden confirmed that such a document would be appropriate for a fit and proper business to have.

Laura Cloney, Licensing Enforcement Team Leader was invited to address the Sub-Committee and referred to the visit on 16 November 2018 when a number of conditions had not been complied with. CCTV footage was only held for 14 days instead of 28 days, there was no-one available to download footage, and there were no notices on display informing customers that CCTV was in operation. The Officer confirmed that these matters were complied with at the visit on 3 January 2019. However Mr Sayed had not taken heed of an e-mail sent following the visit on 2 August 2018 which stated that 'conditions on the licence were very specific which could mean that they no longer meet the needs of your establishment, I would urge you to familiarise yourself with the Licence and the conditions to negate any possible breach of your responsibilities'.

Upon questioning by Mr Morrison, the Officer confirmed that although recordings should have been held for 28 days, the system was working and enough Notices should be displayed to inform customers of the presence of CCTV. Whilst this in itself may not call for a revocation it did raise concerns about how Mr Sayed viewed his responsibilities under the Licensing Act. Mr Morrison stated that the concerns raised had been resolved and asked if there were any current concerns. The Officer explained that she could only confirm that the conditions were complied with on 3 January 2019, and could not say if the conditions were being complied with presently.

Mrs Khan was then invited to address the Sub-Committee and advised that she was speaking on behalf of her husband Mr Khan. They had found it difficult being located next to the Restaurant when there were numerous immigration issues. She believed that Mr Sayed had had enough time to put measures in place. Mrs Khan asked the Sub-Committee to make a decision which sent out a direct message to all businesses that if illegal workers were employed action would be taken. In the 30 years that they had operated she had never encountered this. She and her husband supported the application for revocation of the Premises Licence.

Mr Morrison asked Mrs Khan if she considered herself to be impartial in view of the complaints made against Mr Sayed and as Lebaneat was a rival business. Mrs Khan stated that this was not relevant and that she was present to support the Police review application. Mr Morrison was advised to address the matter of complaints made by Mrs Khan against Mr Sayed in his presentation.

Mr Morrison was invited to address the Sub-Committee and commenced by stating that the test was whether the business was 'fit and proper' and the date from which this should be assessed was now. He intended to demonstrate that all legitimate

concerns had now been addressed because of procedures and checks and balances put in place.

Mr Sayed was asked by Mr Morrison to read out his witness statement which had been circulated to all parties with the additional information.

After doing so, Mr Morrison asked a number of questions of Mr Sayed about the range of measures designed to render the business 'fit and proper'. In response Mr Sayed advised that he had employed an Operations Manager Ms Oana Cotoi to put systems in place and to ensure they were complied with.

Referring to the starter checklist and the right to work checklist included in the additional information, Mr Sayed advised that potential employees were required to complete these documents before any trial shift or training. The Operations Manager ensured that this was implemented. The company advertised vacant positions on a specialist recruitment site and the Operations Manager checked all documentation before giving workers a trial.

The Operations Manager maintained the staff records and people could not now turn up at the premises asking for employment without documentation. The Operations Manager checked each premises twice per day.

Regarding the problems with Mr and Mrs Khan, it was explained that these had occurred when his business partner was involved with the premises. Mr Sayed explained that his partner had sold his share of the business in 2016 at which time he struggled to control the business. His partner had dealt with all paperwork and he was responsible for food and customer service.

He would have no problems with the business being monitored for a period of time going forward.

Upon questions from Members Mr Sayed confirmed that English was not his first language and that his Solicitor had drafted the statement using Mr Sayed's own words.

Councillor L Brown referred to the witness statement and asked Mr Sayed to clarify which evidence the Police would not look at in the meeting on 29 November 2018, and was informed that it related to the documentation included in the additional bundle of evidence.

Councillor Brown also asked why Mr Sayed had not put procedures in place following the visits to the premises in 2016, on the advice of Immigration Officers. Mr Sayed advised that at that time his business partner had left two months earlier, he had been in the process of opening a further branch of the business and it was difficult at times. It was a stressful time for him and he did not mean to break the law. He was looking to expand the business and provide good food. It was difficult to find staff familiar with Lebanese cuisine and he was trying to search for the right people and trialled 2 or 3 chefs every day. He now had time to do this as he had an Operations Manager and a Secretary.

In response to a question from Councillor Crathorne, Mr Sayed advised that the unpaid trial was for 12 hours over 2 days. He did not know why he had not paid the workers but that now he did. At the time the males had said that they were chefs. The workers were not asked for documents for a trial shift but he had now started doing that following advice from Immigration.

Councillor Crathorne made the point that despite this advice Mr Sayed had employed illegal workers in 2018 and asked if he had carried out any checks. Mr Sayed advised that he had taken copies of passports, and he received documents in relation to the second male on 16 August 2018. When Immigration had arrived at 5pm on 2 August 2018 the premises had just opened and he had panicked.

Following a request for clarification from Mrs Hazell, Mr Sayed explained that he had opened Lebaneat Express in June 2016. The Restaurant had opened in 2014 and the Wrap House in November 2016. The Operations Manager was appointed in September 2018.

Following a question from Councillor L Brown, Mr Sayed advised that Lebaneat Express had also been visited on 2 August 2018 without problem.

Mr Mooney asked if the Licence Holder had brought copies of completed right to work and starter checklist forms to demonstrate that they were being completed but was informed by the Operations Manager that he had not.

Upon questioning by Mr Mooney, the Operations Manager Ms Cotoi confirmed that she had worked at Lebaneat before September 2018 and that she was present during the visit on 2 August 2018 but could not recall that she had told the males to be quiet. Mr Sayed explained that the chefs and staff had left customers unattended and he had told them not to panic but to carry on serving the customers. They did not know what was happening and they had tried to calm them to allow Officers to carry out the checks.

Mr Mooney asked Mr Sayed why he had said that the Agency was not his company and why there were different names for each company. Mr Sayed said that he had not meant to say that and that he had panicked. He had used a shorter name for one company but he did not think this was an issue and there was no particular reason for doing this. He confirmed that all of the companies were his own.

Upon further questioning by Mr Mooney, Mr Sayed advised that he had completed a Personal Licence Holder's course on 28 September 2018 and the purpose of the meeting with DC Haythorntwaite was to show the Police and Licensing Authority the procedures he now had in place and to seek advice from the Police. Mr Sayed acknowledged that the Police Officer had taken the information with him following the meeting, however he would have appreciated being given the opportunity to discuss the documents with the Officer at the time.

Following a question from Sgt Dickenson, the Operations Manager advised that she did not hold a Personal Licence but had completed the course, which covered all aspects of licensing, on 31 July 2018.

Mr Bryden referred to the male who at the time of the visit did not have the necessary documentation but later produced proof of eligibility to work on 16 August 2018. Mr Bryden asked what Mr Sayed intended to do with staff who were being trained but who could not be employed because they were not eligible. The question was not answered, and Mr Morrison said that it was a hypothetical question as the male was found to be eligible to work.

Oana Cotoi, Operations Manager, through questions from Mr Morrison explained her role as Operations Manager which was, in general, 50% staff recruitment/training and 50% developing/updating the operating procedures. In July 2018 the Head Office Sayed Trading Ltd was opened to deal with staffing at all Lebaneat venues. There were three premises in a three mile radius and staff may be required to work across each. It was therefore sensible to have one company looking after staff and recruitment. People could no longer walk into the premises and ask for work. They used a well-known recruitment site to advertise for staff. Applicants were required to produce photo ID, NI number, proof of address, bank details, and birth certificate if born in the UK. If candidates could not present documents proving their entitlement to work, they would be sent away. There was now a whistle-blowing procedure and if an employee thought that someone was working illegally they could report this to Ms Cotoi.

Following the visit in November 2018 the premises were given 7 days to comply with conditions and this had been adhered to. Written records were now held in relation to staff training. Ms Cotoi confirmed that she visited the premises twice daily and when trials were taking place. Four people were now employed to undertake the tasks previously undertaken by one person. The Team ensured that all aspects of the business were covered and they were improving every day. Their jobs depended upon the company doing well.

Following questions from Sgt Dickenson regarding the staff training record, Ms Cotoi advised that she had drafted the document with the Licensing Consultant. Sgt Dickenson noted from the record that only 13 staff were included for the Restaurant and 3 for the Wrap House. This was confirmed; these were full-time employees whose work involved licensable activities. Sgt Dickenson also noted that the staff training manual for alcohol sales stated that the fine was £80 and that the Magistrates could impose a fine of up to £5000. This was not now the case. The fine now imposed was £90 and an unlimited fine could now be imposed by the Magistrates.

Following a request for clarification from Mrs Hazell, Mr Sayed accepted that no licensing fee had been paid but alcohol had been served in 2017. At that time all licences were held under one name and he assumed that the licence for Lebaneat covered all premises. As soon as he became aware of the gap he had taken immediate steps.

All parties were invited to make closing statements.

Mr Mooney stated that Mr Morrison had referred to 'fit and proper' but this was not the test that should be applied. The correct test was whether the licensing objectives were being promoted as set out in S4 and S52 of the Licensing Act 2003.

The review applications and objections were submitted on the grounds that Mr Sayed was not promoting the licensing objective of the prevention of crime and disorder. Mr Morrison had stated that there was no disorder at the premises, but this was disorder linked to crime through the employment of illegal workers. The Police had serious concerns about the lax approach of Mr Sayed to this very serious matter. Mr Sayed had bypassed rules. The Wrap House Premises Licence had lapsed for 2 years and this was not a gap; the argument Mr Sayed had used was suspect and he had accepted that alcohol had been sold. The premises had failed to comply with conditions and there were no degrees of compliance, the premises were either compliant or not. The Police had seen the procedural documents very late in the day and did not show how they were implemented in reality. Although not Operations Manager at the time of the visit on 2 August 2018, Ms Cotoi was employed by Mr Sayed, and had told a male not to say anything.

Mr Sayed had said that the employment of illegal workers was not serious and this was an issue for the Police. He asked the Sub-Committee to reject the applications to transfer the Premises Licence and to vary the DPS, and to revoke both Premises Licences.

Mr Morrison stated that the Sub-Committee's task was to decide whether the current shape of the business met the licensing objectives or not. Mr Sayed had been measured entirely on the basis of past concerns but that he had not addressed these concerns could not be further from the truth. There were systems in place which addressed those issues. 'Fit and proper' was a relevant test which was bound up by a level of trust. The documentation provided was not a case of 'fobbing off' but evidence of a company wanting to transition from a small business to a larger one. They had recruited a Durham Graduate, Ms Cotoi to enforce standards. Immigration had said what it would like to see from the premises and he suggested that all the Home Office would need was included in the material. Checks and balances were now in place to ensure that employees were eligible to work.

He urged the Sub-Committee to focus on what steps had been taken to remedy concerns. Mr Sayed had re-organised the business and had put in place a format that any responsible company would. The current systems in place met all requirements but Members may feel stringent measures were needed and the company would abide by any conditions imposed upon the Premises Licence. Mr Sayed wanted to improve his stock in society.

At 3.10pm the Sub-Committee **Resolved** to retire to deliberate the application in private.

After re-convening at 4.00pm the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee had considered the report of the Senior Licensing Officer and additional information submitted by the Licence Holder, and the verbal and written representations of those in attendance for the Applicant, Responsible Authorities, Other Person and the Licence Holder. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That

- a) the application to transfer the Premises Licence at Lebaneat Wrap House be refused;
- b) the application to vary the DPS at Lebaneat Wrap House be refused;
- c) the Premises Licence in respect of Lebaneat be revoked;
- d) the Premises Licence in respect of Lebaneat Wrap House be revoked.