

PUBLIC HEALTH AND LICENSING



| <i>For Office use only</i> | |
|------------------------------------|-----------------|
| <i>Caps Application No.</i> | |
| <i>Licence Number</i> | LI/05/1014/PREM |

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
 If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
 You may wish to keep a copy of the completed form for your records.

I Chief Immigration Officer Elliot Andrews

apply 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

Part 1 – Premises or club premises details

| | |
|---|---------------------------|
| Postal address of premises or, if none, ordnance survey map reference or description Indian Cottage London Road West Sussex | |
| Post town Ashington | Post code RH20 3JT |

| |
|---|
| Name of premises licence holder or club holding club premises certificate (if known) Mr Bodruz Raman <div style="background-color: black; width: 100px; height: 20px; margin-top: 5px;"></div> <div style="background-color: black; width: 80px; height: 20px; margin-top: 5px;"></div> Mr Jashim Uddin <div style="background-color: black; width: 100px; height: 20px; margin-top: 5px;"></div> <div style="background-color: black; width: 80px; height: 20px; margin-top: 5px;"></div> |
|---|

Mr Kaher Zaman

Number of premises licence or club premises certificate (if known)
LI/05/1014/PREM

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

2) a responsible authority (please complete (C) below)

☒

3) a member of the club to which this application relates (please complete (A) below)

☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr

☐

Mrs

☐

Miss

☐

Ms

☐

Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

☐

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

**South East - Immigration Compliance & Enforcement (ICE) Team
Immigration Enforcement
Home Office**

**Timberham House, World Cargo Centre
Gatwick Airport, RH6 0EZ**

Telephone number (if any)

██████████

E-mail address (optional)

██

This application to review relates to the following licensing objective(s)

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

☒
☐
☐
☐

Please state the ground(s) for review (please read guidance note 2)

Immigration Enforcement contend that the Licensing Objective of:

- i) Prevention of crime & disorder

has been seriously undermined by the Premises Licence Holders who, between two premises, have been found to be employing illegal workers who have no right to work in the United Kingdom due to their immigration status.

The Indian Cottage, Ashington (LI/05/1014/PREM) is one of a number of premises in the West Sussex Division which have, in recent months, been subject to enforcement action by Immigration Officers from the Sussex Immigration Compliance and Enforcement Team of the Home Office.

The Cottage Tandoori restaurant in Storrington with the same premises management, premises licence LI/05/1009/PREM, has also been subject to similar enforcement action and is also subject of a review application sought by Immigration Enforcement

The enforcement visits for these premises were conducted over an 11 month period (July 2016 – June 2017) and a total of 9 instances of illegal working were identified across both premises; that is persons were found to be employed who have no right to work in the UK (on some occasions the same persons were encountered at the 2nd and 3rd visits to these premises).

A total of £120,000 penalty has been issued by the Home Office to the premises licence holders as a result of their employment of illegal workers. This penalty amount relates to penalties issued from the 1st and 2nd enforcement visits to the premises, the decision regarding the potential penalties relating to the 3rd enforcement visit currently remains outstanding. To date none of these civil penalties has been paid by the premises licence holders, neither did they appeal/object in court the decision to issue these penalties. The penalties for the Ashington premises were issued to Kaher Zaman & Sons Limited. Companies House shows that Mr Kaher Zaman is the sole director.

Appropriate checks had not been made at either premises by the Premises Licence Holders to ensure that all the staff employed had the right to work in the United Kingdom.

Sleeping areas for multiple persons were identified by immigration officers at the premises.

The premises licences holders for The Indian Cottage Restaurant, Ashington are; Mr Bodruz Raman, Mr Jashim Uddin and Mr Kaher Zaman and the grounds for the review relate to the employment of illegal workers.

The time lapse between the dates of the incidents and the ultimate submission of the Review applications has been in part due to the ongoing enforcement action by the Sussex Immigration Compliance and Enforcement Team.

Please provide as much information as possible to support the application (please read guidance note 3)

A timeline of Immigration Enforcement's involvement with the Ashington premises is as follows:

25/08/2016 - Enforcement visit conducted to Indian Cottage, Ashington. Search Warrant under Paragraph 17 (2), Schedule 2, Immigration Act 1971 (as amended) executed. 4x illegal workers identified during the visit. 3 of these persons were arrested & detained at an Immigration Removal Centre. As a result of this enforcement visit a Civil Penalty of £60,000 was issued to the business (Kaher Zaman & Sons Limited) on 20/10/2016.

18/11/2016 Enforcement visit conducted to Indian Cottage, Ashington. Search Warrant under Paragraph 17 (2), Schedule 2, Immigration Act 1971 (as amended) executed. 4x illegal workers identified during the visit. 2 of these persons were arrested & detained at an Immigration Removal Centre. 2 illegal workers had also been encountered working illegally at the premises during the visit on the 25/08/16. As a result of this enforcement visit a Civil Penalty of £60,000 was issued to the business (Kaher Zaman & Sons Limited) on 16/02/2017.

22/06/2017 - Enforcement visit conducted to Indian Cottage, Ashington. Entry gained under S179 of the Licensing Act. 1x illegal worker identified during the visit, that is persons found to be employed by the premises who had no permission to work in the UK. This person was arrested and detained. A notice of potential liability was issued to the premises licence holder, informing them that unless they can prove they conducted the correct right to work checks they would be liable to a penalty of up to £20,000 per worker – therefore on this occasion the business faces a potential further penalty of £20,000. The result of this potential liability is still pending.

While it is noted that these cases are currently being dealt with by way of a civil penalty that does not alter the fact that the licensing objective of the prevention of crime and disorder has been undermined by the actions of the premises licence holder and/or the DPS on each occasion.

Staff who are not officially registered as employees will not be afforded protection under employment law or other safeguarding mechanisms. The males employed across the premises could not have provided the requisite paperwork, national insurance number, nor tax code. This not only defrauds Her Majesty's Revenue & Customs but can lead to the exploitation of vulnerable individuals. In this instance the failure to put appropriate checks in place has resulted in multiple individuals being unlawfully employed at both premises. The licensing objectives are in place for the avoidance of future harm and, as cited in the High Court ruling in relation to East Lindsey District Council v Abu Hanif, where there is evidence of defrauding HMRC, exploitation of vulnerable workers and a failure to pay the minimum wage, then in those circumstances, albeit being dealt with by way of civil penalty, the crime and

disorder licensing objective is clearly engaged.

The Revised Guidance under Section 182 of the Licensing Act 2003 states;

11.26 Where the licensing Authority is conducting a Review on the grounds that the premises has been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

It further states;

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the premises:

- *For knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter*

11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. 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

Immigration Enforcement contends that despite repeated intervention from ourselves, offences have been repeatedly committed which cannot be allowed to continue. Having considered the alternatives, it is requested that the Licensing Committee seriously consider revocation of this premises licence. This will send a strong message that that the Local Authority are proactively combating the exploitation of workers, by ensuring employers take seriously their responsibilities in relation to the legislation and to the people within their employ.

Philip Kolvin QC reports on an important High Court ruling after a restaurant owner appealed the revocation of his premises licence over the employment of an illegal worker.

In *East Lindsey District Council v Abu Hanif (trading as Zara's restaurant and takeaway)* a High Court Judge has restored a licensing authority's decision to revoke a premises licence for employment of an illegal worker.

Zara's restaurant traded in East Lindsey. The owner and licensee was Mr Hanif. After a raid by the immigration authorities it was discovered that Mr Hanif was employing an illegal worker.

The Police brought review proceedings and the licensing authority revoked the premises licence. Mr Hanif appealed. At the appeal, which was heard by District Judge Veits, his counsel argued before the District Judge that, since Mr Hanif had not been prosecuted for employing an illegal worker under section 21 Immigration, Asylum and Nationality Act 2006, but had merely been given a civil penalty under section 15 of that legislation, the crime prevention objective was not engaged.

At the hearing of the magistrates' appeal, it was established that Mr Hanif had employed the illegal worker without paperwork showing a right to work in the UK, he had paid him cash in hand, he paid him less than the minimum wage, he did not keep or maintain PAYE records and that, while he had deducted tax from the worker's salary, he failed to account to the HMRC for the tax deducted.

The District Judge held that because prosecution proceedings had not been brought, and no crime had been reported, the crime prevention objective was not engaged; and that in any event the failure to pay the minimum wage had not been the main basis of the licensing authority's decision.

The council appealed by way of case stated. It argued that it is not necessary for a crime to have been reported, prosecuted or established in a court of law in order for the crime prevention objective to be engaged. The licensing objectives are prospective, and are concerned with the avoidance of harm in the future. The matter came before Mr Justice Jay. He accepted all of the council's arguments. In his view, there was clear evidence of the commission of criminal offences, both in relation to the non-payment of the minimum wage and also tax evasion. As for the offence of knowingly employing an illegal worker, he considered that, based on the fact that the employee could not provide the requisite paperwork, a national insurance number or a tax code, the clear inference was that Mr Hanif well knew that he was employing an illegal worker. A deterrent approach was justified on the facts.

Mr Justice Jay decided that remission of the case to the Magistrates' Court was not appropriate, since he considered that the council's decision to revoke was clearly correct. In reaching that decision, the Learned Judge pointed out that employing an illegal worker involves not only defrauding the Revenue, but

also the exploitation of vulnerable individuals including, here, by not paying them the minimum wage.

The Learned Judge ordered Mr Hanif to pay costs in the High Court in the sum of £15,000 and ordered costs of the Magistrates' proceedings in the sum of £4,000.

Reflecting the importance of the principle that it is not necessary for a prosecution to be brought in order for the crime prevention objective to be engaged, Mr Justice Jay certified the case as appropriate for citation in future cases under the relevant Practice Direction. This means that the judgment can be cited in future cases.

Please
☒ **No**

| Day | Month | Year |
|-----|-------|------|
| | | |

If you have made representations before relating to the premises please state what they were and when you made them

tick ✓ yes

Please

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....Elliot

Andrews.....

Date **14/07/2017**

Capacity **Chief Immigration Officer, South East Immigration, Compliance & Enforcement (ICE)**

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

**Timberham House, World Cargo Centre
Gatwick Airport, RH6 0EZ**

Post town

Post Code

Telephone number (if any) [REDACTED]

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) [REDACTED]

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.

6. This is the address which we shall use to correspond with you about this application.