

**Licensing Sub-Committee
(Masala Bites)**

**Friday, 19th August, 2016
2.00 - 3.14 pm**

Attendees	
Councillors:	Diggory Seacome (Chairman), Mike Collins and Pat Thornton
Officers:	Phil Cooper and Fiona Samuda
Also in attendance:	PC Steve Kiernan, Licensing Officer, Gloucestershire Constabulary; PC Jaine Simner, Licensing Manager, Gloucestershire Constabulary; DC Sarah Stewart, Avon and Somerset Constabulary seconded to Home Office Immigration; Mr Tim Burnham, Chief Immigration Officer, Home Office; Mr Michael Parrott, Director Gregg Latchams Solicitors; Mr Ahmed Shareef, Licence Holder

Minutes

1. ELECTION OF CHAIRMAN

Councillor Diggory Seacome was elected as Chairman.

2. APOLOGIES

None

3. DECLARATIONS OF INTEREST

None

4. DETERMINATION OF AN APPLICATION FOR A REVIEW OF A PREMISES LICENCE

Licensing Officer, Phil Cooper, introduced the report regarding an application received on 29 June 2016 from Gloucestershire Constabulary to review the premises licence of Masala Bites, 22-24 Albion Street. This establishment has a premises licence authorising the sale of alcohol.

The Licensing Act 2003 allows any responsible authority or other person to apply to review a premises licence at any time, if their grounds relate to the premises and to one or more of the licensing objectives, which are

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance and
- The protection of children from harm

Gloucestershire Constabulary had applied to review the premises licence following a visit by home office immigration officers in February 2016. During the visit the officers carried out immigration checks on persons present and concluded that they were employed illegally at the premises.

The matter was subsequently referred for consideration of a civil penalty, after which the constabulary made their application to review the premises licence on the grounds of the prevention of crime and disorder and public safety.

Further reasons for the constabulary's application to review the licence were outlined in their application, which was attached as Appendix A to the report.

The Officer continued that the civil penalty had been disputed and informed members of the sub-committee, that they had to consider whether, in light of the facts presented, the operation of the premises was adversely affecting the licensing objectives and if so, what action to take. The options available to the sub-committee, if they determined that action must be taken, were:

- To modify the conditions on the premises licence
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period of up to 3 months
- Or revoke the licence

The decision of the sub-committee carried with it the right of appeal to the magistrates' court.

There being no questions to the Officer, the Chair invited the applicant to present the case. PC Steve Kiernan, Licensing Officer for Gloucestershire Constabulary, commenced by stating that Masala Bites was, from a policing perspective, a well-run established restaurant that had not been in anyway problematic, with no reports pertaining to the premises at all over the last 12 month period. The matter had been brought to sub-committee because they felt that none of the options available for consideration were appropriate to address the gravity of the claim. He explained that as a result of Immigration attending the restaurant in February 2016 and finding two males working there illegally, a civil penalty fine of £15,000 had been served on the premises on 1 July 2016 which had been objected to but not yet considered. PC Kiernan acknowledged that inevitably the facts presented in the review submission would be contested due to the huge implications on the business, but stated that the illegal employment of workers in licensed premises in Cheltenham was not only detrimental to the licensing objectives but also to the reputation of Cheltenham and thus felt it right and proper to bring before this sub-committee.

The Chair invited Mr Michael Parrott, Solicitor representing Mr Ahmed Shareef the license holder, to address the sub-committee. Mr Parrott informed members that the initial civil penalty notice had been withdrawn and another issued against Ansar Ali (no connection to Mr Ali Ansar in the previous hearing) on 7 August 2016 with the appeal period running until 14 September 2016, so he had no further information on this. However, the current notice was now £10,000 and related to only one worker. Again members' attention was drawn to the payslips confirming National Insurance numbers. Mr Parrott confirmed that Masala Bites was currently closed for refurbishment and possible onward sale. Mr Parrott further explained that Mr Shareef had been the owner of this Indian restaurant and take away for two years, before Mr Ansar Ali took over the running of it on a trial basis from January 2016. In February 2016, the Home Office found two illegal workers at the premises, but they have not proceeded against the one person and have reduced the penalty against the other. Mr Ali was aware that Mr Farid Ahmed was looking for work and would give him work

if he provided the correct paper work. On the day of the raid he was visiting and in the kitchen making a cup of tea. He was not in uniform. Mr Ali had been in effective charge of the day to day business but Mr Shareef was clear about his responsibilities for checking on staff. The fixed penalty notice was against Mr Ali and as the visit by the Home Office was over 6 months ago and there had been no complaints since, the Solicitor suggested that expensive lessons had been learnt and asked the sub-committee to exercise discretion and not revoke the licence.

Mr Tim Burnham, the Chief Immigration Officer from the Home Office, asked for clarification on the roles of management. It was confirmed that the Designated Premises Supervisor was listed as Mr Abdul Mannan. The Licence holder was Mr Ahmed Shareef, who was also a silent partner in the business with the registered owner Rayhan Chowdury. The Manager was Mr Ansar Ali. It was confirmed that Mr Ansar Ali was in charge in February 2016. Mr Shareef stated that he took over the business two years ago and that Mr Ali came in in January 2016 to try and help the business as many were closing in the area. However the business was now closed for refurbishment or for sale. When asked why Mr Ali was not present at this hearing, Mr Shareef confirmed that as the premises was now closed Mr Ali was no longer around and that he was present as the premises licence holder.

The Chief Immigration Officer referred to another civil penalty notice of £20,000 that had been served on the same restaurant in November 2014 and asked Mr Shareef if he was aware of this. Mr Shareef said he did know about it and that as a result of that notice, he visited the restaurant more often and asked that visitors from the mosque did not visit. When further questioned on this by the Council's Solicitor, Mr Shareef replied that he was not aware of anyone being illegally employed and that he had taken extra steps to try and enforce that visitors didn't come into the restaurant. A member asked if the penalty of November 2014 had been paid, to which Mr Shareef replied that it had not been paid in full as it was being paid in instalments. Mr Shareef's Solicitor was unable to comment as he was unaware of the November 2014 penalty.

During further questioning, there seemed to be confusion over who owned the business at the time, as well as discrepancies in the details provided about the two men listed for the current civil penalty and whether they were working at the premises or not. A member pointed out that in interview notes contained in the background papers supplied by the Police, both of the alleged illegal workers confirmed that they were employed at the premises. Mr Shareef said he had no recollection of the details, but stressed that the two men in question shouldn't have been working there and weren't employed by the restaurant. He said they were probably visiting from the local community centre and, as is the custom, were offered food and drink. When asked about the men's statement that they slept above the premises, Mr Shareef said he was not aware of them sleeping there, but if friends stayed over it was beyond his control. Mr Shareef confirmed that Masala Bites had three rooms upstairs and six rooms at the back and that people could be staying there, he didn't know. This raised a statement from a member regarding health and safety, food hygiene and fire regulations. Mr Shareef did state there was a separate entrance to the restaurant.

Mr Shareef continued that he was aware of health and safety rules and said that visitors didn't use the kitchen but used the second room of the restaurant as the

restaurant was in two sections. He explained that the restaurant had not been doing well recently. It used to be a busy area with the Odeon cinema and other pubs and restaurants nearby, but with the closure of the Odeon, many premises had closed and with the construction of the new development on the former Odeon site, not many people visited this area now. Thus Masala Bites closed on 22 July 2016 and Mr Shareef said that he was currently looking for someone to buy the premises as it was no longer viable for him.

In reply to a question from the Council's Solicitor on surrendering his licence, Mr Shareef said he had thought about it, but considered he had more chance of selling the premises with a liquor licence than without.

There being no further questions, the Solicitor for Mr Shareef stated that being unaware of the previous civil penalty he could not comment on that, but that otherwise this well-known restaurant had had no other issues other than the visit in February 2016. He reconfirmed that the current penalty was subject to appeal. He asked members to consider that suspension of the licence would have less of an impact as the restaurant was already closed and the licence could then be resurrected in the 21 day period, to help facilitate the sale of the premises. He hoped the sub-committee would not revoke the licence.

The Police in summing up, stated that the management of the restaurant seemed to be chaotic, with Mr Shareef not aware of what was happening or who was working there and that the Designated Premises Supervisor, being another man, could not be in control if he was not around. They had concerns about the regular visits of the people from the mosque, plus the fact no one was in charge of the rooms upstairs and ultimately that there had been one illegal worker present. The Police expected the licensing policy to be adhered to and requested revocation.

The sub-committee adjourned from the Chamber at 14.50 and reconvened at 15.08, when the Chair read out the following statement.

The sub-committee has considered the Licensing Act 2003, the Section 182 guidance and the licensing objectives and is confident that the prevention of crime and disorder and public safety matters are engaged. The sub-committee has further considered the evidence and representations before it today.

We do find that Masala Bites allowed persons whose credentials were not adequately checked to work there illegally. Consequently, we have decided to revoke the licence. We did also find that the running of the restaurant left a lot to be desired.

The Council's Solicitor advised that they had the right of appeal for a period of 21 days from the date of the decision being formally notified in writing.

Diggory Seacome
Chairman