

Cheltenham Borough Council Licensing Sub Committee-Alcohol and Gambling Minutes

Meeting date: 11 October 2023

Meeting time: 18.00 – 21.15

In attendance:

Councillors:

Ed Chidley, Diggory Seacome (Reserve) and David Willingham (Reserve)

Also in attendance:

Vikki Fennell (Senior Lawyer) and Jason Kirkwood (Licensing Team Leader)

1 Election of Chair

Councillor Dr David Willingham was elected as Chair of the committee.

2 Apologies

There were none.

3 Declarations of interest

There were none.

4 Determination of Application for a Premises Licence Review

The meeting started and then was adjourned until 18.35 as the applicant wanted to add additional papers to the hearing. These had not been received prior to the committee. The Chair along with the Legal Officer gave permission for the papers to be circulated to all parties.

The Licensing Team Leader introduced the report as published. He also explained the options that were available to the committee which were: removal of the DPS, suspend the licence for up to 3 months or revoke the licence. It was also explained that any action will not take place until 21 days of the written decision.

The Immigration Officer addressed the committee and made the following points:

- The visit to the premises was intelligence led as they had received an allegation that there was 3 named males employed illegally and living at the address.
- When the raid occurred there were 12 workers in the property in total. 2 of them being the people that were named on the warrant a further 3 who had an adverse reaction to the visit. All 6 of those people were not allowed to be present in the UK and confirmed to the officer that they had been supplied with wages and somewhere to live. They were escorted from the premises and into police custody.
- Mr Hussain fully admitted to having employed the 6 men and Koloshi Gold was issued with a fine of £90,000, the decision was not appealed therefore they accepted liability.
- The business has the statutory obligation to promote the licensing objectives, that had not happened in this case as 6 illegal persons who had no status in the UK were employed, the right to work checks had not been carried out and disregard for the legislation was shown.
- Employing people who have no status in the UK has a huge negative impact on the UK and is harmful to legitimate businesses, it is also a breach of the national minimum wage. The Home Office is committed to tackling illegal working.
- Mr Hussain was aware of the checks that he was supposed to undertake and has carried them out for the other staff members.

The committee then had the opportunity to ask the Immigration Officer questions and the responses were as follows:

- It was stated that the names on the late documents were unlikely to be the people involved in the raid.
- It was confirmed that the company that was prosecuted was Koloshi Gold Ltd.
- It was confirmed that the DPS was not present at the time of the raid.
- The thought was that there had been a change of staff at the property since the raid.

The legal representative for the licence holder then addressed the committee and made the following points:

- Everything that the immigration officer has said with regard to the raid cannot be commented on by him as the current licensee did not become the owner until after the raid.
- They have no issue with what has been said as they were not the owners at the time and it is a reflection on the previous owner.
- The transfer of the ownership has been a bonafide change of hands, the new owner has numerous businesses and has had no issues in the 25 years that he has been trading, he takes the issues that have been discussed very seriously.

- If the licence is revoked it will no longer be a viable business. The options are between a revocation and a continuation of the licence.
- There is now a marker on the business. The legal representative suggested that a condition could be attached to the business to illustrate the sincerity of the new owner.
- Revocation will put the business out of business and the new owner had no knowledge of any of the problems caused by the old owner and now faces losing his licence.
- He is not the current DPS but will be, he is also the director of the company and has supplied his documents.

The matter then went to Member questions for the licensee, the responses were as follows:

- After the raid the previous company had ceased trading, the previous business was Koloshi Gold Ltd the new business is 3 Gold Ltd. The owner of Koloshi Gold approached the new owner to buy the business in April, the new owner agreed not knowing the background to the business.
- The website has not yet been updated, and still shows Koloshi with an award winning chef who is no longer there.
- The chef was A Hussain – he was also the owner but G Azam had the lease.
- The Hussains mentioned on all the paperwork are not related and that it is a common name in the community.
- The question regarding the September payslip for G Azam could not be answered.
- They didn't know how the other business operated, the new licensee is not a sophisticated man but he does know the curry trade. He found the business viable he is a businessman with various businesses that can support the new business if needed. The deal was done by word and bond, he visited the business, saw the books and agreed the price of £100,000 to be paid at the end of the tax year. The agreement is that if the business doesn't do well then that amount will not be paid.
- The Home Office raided the property on the 1/4/23 and the sale was signed on the 6/4/23, he had no idea regarding the raid.
- The new licensee started running the business on the 10th or 12th April and employed a total of 10 people including those who work part time on Fridays and Saturdays only.
- Juno Begum was the director until 9th October 2023 as listed at Companies House, the formal transfer did not occur as there was a need to establish the companies liabilities first. The new owner assumed the role as shadow director.
- It was stated that there was no-one by the name of N Islam linked to the property, however when this was questioned further as N Islam is named as the DPS it was confirmed that he is not an employee. It was explained to them that the DPS has to be an employee.
- There is a G Asam named on the sub lease and is also referred to in the papers as the secretary of Koloshi Gold, it was confirmed that he has nothing to do with the new business and is just the main leaseholder.

- There is no document that states that payment will be made for the business next April, the payment is agreed by the parties involved. The reason the owner accepted the offer is that they trust him.
- Koloshi Ltd as a business may still exist but it does not have anything to do with 3 Gold Ltd.
- The new owner was made aware that the business was for sale via a friend who is also in the curry house business. £100,000 is not a lot of money in the restaurant business, he thought that it was a bargain added to that was buying the business on interest free credit.
- The new owner did not know of the Home Office action and review until August when he received the papers from the Council and it would have been kept from him and kept within the community.
- With regard to making the payment in April he has businesses here and abroad and is selling a property. There is no problem with him getting the money and he believes the business is a bargain.
- The new owner will get to keep the Koloshi name as part of the business as the name is worth something, customers know of the restaurant because of the name.
- B Hussain and G Asam are not part of the business, the reason that they keep appearing in documents is that they have an interest in just the building.
- The legal representative of the owner stated that they would be happy with any conditions being imposed if it meant that the licence would not be revoked. He gave the example of submitting all the employee records to the licensing authority and having CCTV installed to monitor employees.
- If the licence is revoked then he could lose his business that he has invested money in already.
- In his 25years of operation he has never had any problems.
- The owner intends to be the DPS at the restaurant, and to make his son the DPS at the current restaurant he owns in Birmingham.
- It was confirmed that the restaurant was open that evening in his absence as he felt that the committee was more important.
- In summing up the legal representative stated that it was at the committees discretion whether to permit the licence to remain. The new owner is the person in control regardless of what the documents state. He is an official director and feels that he has a bargain and wishes to maintain the business.

The matter then went to Member debate where the following points were raised:

- There is no dispute with the Home Office evidence.
- There are 6 cases of failing to check documents and complicity by the previous owner. There was intention to deceive in the report and there is national minimum wage issues, no national insurance has been paid and those issues would relate to crime and disorder issues which are strong grounds to revoke.
- The other option appears to be that the new owner has failed to do good due diligence, or has been duped by the old owner. Is the new owner the victim or whether the names on the documents are names by proxy and that is a matter for the committee to consider?
- Is there any clear evidence that the new owner is the bona fide owner and the transfer is correct or is there controlling influence from the old company?-

- Need to look at the date of the raid and the date that the transfer took place and decide if that's an issue.

The licensee's legal representative was then given the final right to reply and made the following points:

- The new owner bought the business due to the position of the restaurant he lives in Rowley Regis, in less than 3 minutes he can be on the M5 and on his way to Cheltenham.
- The committee cannot prove that he is in anyway related to the raid.

The Licensing Team Leader stated that there would not be any financial loss to the new owner as no money has exchanged hands. The legal representative stated that the new owner had put money into renovating the property so that money would be lost. He also stated that if the licence is revoked then there will have to be redundancies which would also cost money.

The meeting then adjourned for the committee to take the decision and write the notice.

The decision was taken unanimously to revoke the licence.

The reasons were as follows:

- The committee considered the Licensing Act 2003, the Section 182 guidance and the licensing objectives and were confident that the prevention of crime and disorder objective is engaged.
- Six workers with migration issues suggests complicity in providing work for trafficked individuals. This raises questions about exploitation, failure to pay national insurance and tax and the national minimum wage, these further grounds are related to the Crime and Disorder objective.
- Given the rapid sale of the business, the principle of caveat emptor applies and for £100,000 a lot more due diligence should have been undertaken.
- A considerable number of documents were given to the committee on the day of the hearing making it difficult for the committee to properly assess the evidence supplied.
- The documents that were supplied seemed to suggest that on the balance of probability people related to Koloshi Gold are still involved with 3 Gold.
- The DPS has not been changed and when questioned there were a lot of discrepancies in the answers.
- On balance of probability the committee thought that the new owners and the documentation showed evidence of control by Koloshi Gold and KBS properties Ltd. The committee was concerned that these are all interconnected with 3 Gold. This related to transfer date and people with controlling influence.
- On the balance of probability there was concern that the current owner could still facilitate illegal working.
- Finely balanced conclusion that not doing due diligence and the time line and lack of documentation alongside the amount of money was a concern.

- The committee believed that G Azam (who was complicit in hiring the illegal workers and running the shifts) is still involved in both companies and was still being paid as of September 2023. There does not seem to be enough distance between the previous business who employed illegal workers and the current business.
- The committee did not have the confidence that the crime and disorder objective will be met.
- The other options available, including the conditions suggested did not seem to provide sufficient remedy for the committee's concerns.

The Senior Lawyer then advised that there was 21 days to appeal from the date of the decision.

5 Any other items the Chairman determines to be urgent and which requires a decision

There were none.