

## Minutes

### LICENSING SUB-COMMITTEE

4 February 2019

Meeting held at Committee Room 6 - Civic Centre, High Street,  
Uxbridge



HILLINGDON  
LONDON

	<p><b>Committee Members Present:</b> Councillors Roy Chamdal (Chairman), Simon Arnold, Janet Gardner</p> <p><b>LBH Officers Present:</b> Steven Dormer, Licensing Officer Kerrie Munro, Legal Representative Neil Fraser, Democratic Services Officer Stephanie Waterford, Licensing Manager</p> <p><b>Also Present:</b> PC Butler, Metropolitan Police Jonathan Burton, ICE Councillor John Hensley (Ward Councillor)</p>
42.	<p><b>APOLOGIES FOR ABSENCE</b> (<i>Agenda Item 1</i>)</p> <p>None.</p>
43.	<p><b>DECLARATIONS OF INTEREST IN MATTERS COMING BEFORE THIS MEETING</b> (<i>Agenda Item 2</i>)</p> <p>None.</p>
44.	<p><b>TO CONFIRM THAT THE ITEMS OF BUSINESS MARKED PART I WILL BE CONSIDERED IN PUBLIC AND ITEMS MARKED PART II WILL BE CONSIDERED IN PRIVATE</b> (<i>Agenda Item 3</i>)</p> <p>It was confirmed that all items were marked as Part I, and would therefore be considered in public.</p>
45.	<p><b>MATTERS THAT HAVE BEEN NOTIFIED IN ADVANCE OR URGENT</b> (<i>Agenda Item 4</i>)</p> <p>None.</p>
46.	<p><b>REVIEW OF A PREMISES LICENCE: ROC COTTAGE, SWAKELEYS ROAD, ICKENHAM, UB10 8DG</b> (<i>Agenda Item 5</i>)</p> <p><b>Introduction by the Licensing Officer:</b></p> <p>Mr Steven Dormer, Licensing Officer at the London Borough of Hillingdon, introduced a report relating to an application for a review of the premises licence for Roc Cottage, brought by the Metropolitan Police due to concerns that the managers of the premises were not upholding the crime and prevention objective of the licensing act 2003.</p> <p>Section 182 guidance 11.27 was referred to, setting out the powers for review relating</p>

to the employment of persons without legal right to work or stay in the UK. In this instance, the premises had received two visits by Immigration Officers, in September and November 2018. On each visit, staff members were arrested and investigated for immigration related offences. Arrests for immigration offences, and staff not being aware of their obligation to the conditions of licence, reduced the chances of the premises being effective in supporting the crime and disorder objective of the Licensing Act 2003.

On both visits, Immigration Officers found the management to be ineffective in checking the documentation of staff they were employing at the premises. Upon visiting for the second time, it was apparent that preventative measures had not been put in place ensure that all staff had a legal right to work in the UK.

Whilst none of the premises licence conditions were witnessed as being breached, the management of the premises were failing to uphold the licensing objectives, most notably 'prevention of crime and disorder'.

It was therefore recommended that the Sub-Committee revoke the premises licence taking into consideration the statutory powers 11.19 of section 182 guidance.

The Chairman sought clarity on the matter of the transfer of the premises licence and variation of DPS, as referred to within the report. Mr Dormer confirmed that ordinarily, such a transfer would take approximately 14 days to process. In this instance, the managers of the premises submitted incomplete paperwork, which significantly delayed the processing of the transfer request.

#### **Representation by the Applicant:**

PC Dave Butler of the Metropolitan Police addressed the Sub-Committee as applicant for the review, and provided a summary of the background to the review as set out in the Committee papers. PC Butler was accompanied by Mr Jonathan Burton, of ICE.

ON 21 September 2018, officers from the Immigration Compliance and Enforcement Team (ICE), instigated an investigation into the employment of illegal workers at the restaurant. The ICE Team found 8 members of staff working on the premises, preparing and cooking food. One member identified herself as the person in charge of the restaurant and was subsequently cleared as a resident in the UK and entitled to work.

The remaining 7 staff were spoken to by officers, of whom 5 were found to be illegally present in the UK with no right to work. All 5 subjects were arrested as persons liable to be removed. All the arrested subjects stated that they lived in rooms above the premises.

During the visit, the owner Mr. Zehao Wang attended the premises and stated that he did not employ staff and did not have any records of what staff were employed, stating that that was all done by his partner Mr Quan Xiao, who was not present at the time of the visit. When questioned about the status of his staff, he did not know if they had ever produced any documentation to prove their status in the country and stated that the previous owner and his partner were responsible for that side of the business.

On the 9 November 2018, a second compliance visit was conducted at the premises, where ICE officers detained occupants within. One member of staff was found working in the kitchen, and subsequent checks revealed that they had an outstanding asylum application which did not entitle them to work in the UK. Another worker was found previously working in the kitchen on the Home Office visit dated 21

September, where he was arrested for being an overstayer. The manager, Mr. Zehao Wang was present on this second visit and stated that the staff detained were only preparing meals for themselves, as there were no kitchen facilities upstairs.

Enquiries had revealed that, from the start of August 2018, on numerous occasions over a period of weeks the London Borough of Hillingdon Licensing Service had contacted ROC requesting a transfer and DPS variation. On the 12 September 2018, the London Borough of Hillingdon Licensing Service spoke to the manager, MR Quan Xiao, who insisted that the licence had been transferred as the previous licence holder and DPS had returned to Hong Kong in 2015. It was explained that no applications had been received, and Mr Xiao was advised that he should submit a Transfer and Vary DPS application as soon as possible.

As The London Borough of Hillingdon Licensing Service did not receive the applications, a warning letter was sent on 26 September to the premises, addressed to Quan Xiao. An application to transfer was submitted on 2 October but without consent from the existing licence holder Yiu Fong Wan. The London Borough of Hillingdon Licensing Service spoke to the applicant regarding consent and he explained he was not in contact with Yiu Fong Wan, so it was impossible to obtain consent. It was then explained that the Licensing Act made provision for situations where the consent of the existing Licence Holder to a transfer cannot be obtained, stating that where the Applicant has taken all "reasonable steps" to obtain that consent but cannot actually obtain it then he or she must be exempted from the requirement to get that consent and the transfer can be processed accordingly. A request was also made for proof of interest of the applicant in the property (e.g. a lease) but at the time of submission of the report, this had not been forthcoming.

PC Butler concluded by asserting that the managers of Roc Cottage were not carrying out even the most basic checks of proof of ID or right to work in the UK. Mr Zehao Wang stated that he had no responsibility in the hiring of his staff. As a manager or owner, it was an employer's responsibility to protect the health, safety and welfare of their employees and other people who might be affected by their business. PC Butler asserted that there was no excuse in the first instance, and then by knowingly allowing the an individual to continue to work on the same premises, Mr. Zehao Wang and Quen Xiao were demonstrating a total disregard for the law, and it was requested that the licence be revoked.

Mr Burton, of ICE, clarified that the two civil penalty notices served on the management of Roc Cottage, as outlined within the report, were still being processed. No fines had yet been levied.

Members sought clarity on the number of workers found to be illegally working within the premises over the two visits. It was confirmed that 5 workers were found on the first visit, with 2 of this 5 subsequently found again, on the second visit.

### **Representations by Responsible Authorities:**

Stephanie Waterford, Licensing Manager at the London Borough of Hillingdon, reiterated PC Butler's points and highlighted that the two visits from Immigration officers had resulted in 5 workers being found to be working illegally at Roc Cottage. Mrs Waterford asserted that Mr Wang, as owner, had a responsibility to ensure that workers within his premises were legally able to work within the UK, despite his claim to the contrary.

It was put to the Sub-Committee that the management's inability to ensure their workers were legally approved to work, alongside the issues with transferring the premises licence and DPS in a timely fashion, was evidence that they were unsuitable

to continue running the business. In addition, it was confirmed that while the transfer of the premises licence and DPS was now complete, the food business licence remained under the name of the previous owner.

In summary, and with regard to the evidence presented, it was asserted that Mr Wang and Mr Xiao were not capable of upholding the four licensing objectives, and it was requested that the licence be revoked.

#### **Representation by Ward Councillors:**

Councillor John Hensley addressed the Sub-Committee as Ward Councillor for Ickenham. Councillor Hensley raised concerns over the management's employment of illegal workers, as well as concerns that the management were not paying due tax on their payments to these workers. On the basis that the management of the premises were not fit to operate the business and employ individuals, it was requested that the licence be revoked to promote the licensing objective of 'prevention of crime and disorder'.

#### **Representations by the Licence Holder:**

Mr Xiao, accompanied by his legal representative Nehal Mangrio, addressed the Sub-Committee on behalf of Roc Cottage.

With regard to the transfer of the premises licence and instalment of a new DPS, Mr Xiao asserted that he had provided the London Borough of Hillingdon Licensing team with the relevant documents, including the consent form from the previous owner, in December 2015. These documents were posted from Heathrow airport. Upon learning that these had not been received, a second copy of the documents was sent by recorded delivery in early 2016. These were also not received, and due to the length of time that had since passed, Mr Xiao could not provide any receipts to confirm postage of these documents.

Regarding the employment of illegal workers, Mr Xiao asserted that at the time, management of the premises was chaotic. Mr Xiao confirmed that he was new to the business, and the previous chef and owner had advised that the necessary checks to ensure employees' right to work in the UK had been done. Upon the visits from ICE, it had become apparent that this was not the case, but since then, all staff had been checked and vetted for their right to work. Mr Xiao apologised for what had occurred, and stated that such issues would not be repeated.

Mr Mangrio expanded on Mr Xiao's statement, and asserted that at the point of assuming management of the premises from the previous owner, 3 staff were kept on. One staff member left for personal reasons, leaving 2 staff members. Of the 5 illegal workers identified by ICE, this incorporated the 2 aforementioned staff members, plus 3 others. Of these 3, one was on 'trial' and was not a full member of staff. Trialling staff members was a normal practice, and the relevant checks for right to work were not normally conducted until the trial had concluded. One other member of staff was since found to be living in the UK on a tourist visa, and was potentially not working in the premises, but was present for some other reason.

Upon ICE's second visit, 2 staff members were found. However, these staff members were present on site to collect their personal belongings and were cooking their own lunch, not working.

Mr Mangrio concluded by stating that since the incidents, the management of Roc Cottage had undergone significant changes, and as such, the licence should not be revoked.

Members sought clarity on who was currently managing the premises. Mr Xiao confirmed that he was managing the premises, and Mr Wang was currently in the process of being removed from any management responsibilities.

Members asked Mr Xiao to elaborate on what checks he was now conducting when employing staff. Mr Xiao confirmed that he was reviewing all necessary documentation including passport, visa, and National Insurance cards, copies of which were kept in a case file.

Upon further questioning, Mr Xiao confirmed that he was new to running a business, after completing a university course in business management. In addition, Mr Xiao confirmed that staff vacancies were advertised via the internet, and all staff were issued a payslip when receiving payment.

Mr Xiao was asked whether he knew the minimum wage. Mr Xiao advised that to his knowledge, the minimum wage was £8 p/h for workers over 30 years of age. Pensions contributions for Roc Cottage staff was paid into a scheme on the internet.

Mr Xiao advised that he was now the DPS, and was present on site from 6-10pm most days. He had a personal licence for the sale of alcohol. When asked what the licensing objectives were, Mr Xiao confirmed that they were to sell alcohol responsibly, such as not selling to people already inebriated, and not to sell alcohol outside of the permitted licenced hours, as well as upholding the objection for the prevention of crime.

### **Discussion:**

All parties discussed the matter at hand.

To Mr Xiao, the Sub-Committee asked whether any external companies had been engaged to help provide guidance over best practice on the running of a business. Mr Xiao advised that as yet, they had not employed anyone to that effect.

PC Butler asked Mr Xiao whether his apology for the employment of illegal workers was an admission of guilt, or just a misunderstanding. Mr Xiao advised that he understood that employing illegal workers was breaking the law, and that it should not have taken place. Mr Xiao reiterated that management of the premises had since improved, and such issues would not be repeated.

Mr Xiao was asked to confirm the average hourly rate paid to his staff, and the overall monthly wage bill. Mr Xiao was unable to confirm these details.

It was highlighted that paying staff in cash was not illegal, as long as a payslip was also issued.

### **Closing Remarks**

Mr Xiao advised that, moving forward, he would strictly follow the rules to prevent crime and illegal activities, and would take all reasonable steps to fulfil the requirements of the premises licence.

Mr Mangrio advised that since the management of the premises had undergone change, all rules and regulations would be abided by. To this end, it was requested that the Sub-Committee not revoke the licence, but instead give Mr Xiao the opportunity to prove himself as manager of Roc Cottage.

Mrs Waterford advised that she had heard nothing that allowed her to come to a different conclusion, and reiterated that the licence should be revoked.

PC Butler asserted that, due to the serious breaches outlined, including the employment of illegal workers and their potential exploitation, the licence should be revoked.

Councillor Hensley confirmed that he had no confidence in the management of Roc Cottage, and due to concerns over their ability to uphold the licensing objectives, requested that the licence be revoked.

**Committee Deliberation:**

All parties were asked to leave the room while the Sub-Committee considered its decision.

The sub-committee noted their powers to consider on a Review application whether it should:

- Modify the conditions
- Exclude a licensable activity
- Remove the designated premises supervisor
- Suspend the licence for up to 3 months
- Revoke the licence

All parties were invited back into the room for the Chairman to announce the decision of the Sub-Committee.

**The Decision:**

The Sub-Committee considered all the relevant representations made available to it and in doing so took into account the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003. The Sub-Committee took into account its duty to take all steps necessary in order to determine the application in a manner which upheld the Licensing objectives and Licensing Policy. The Licensing Sub-Committee determined that it was necessary and appropriate to revoke the premises licence.

**Right of Appeal:**

No decision made by the Council will have effect during the time period within which an appeal may be brought and until such time that any appeal has been determined or abandoned.

The applicant for review, holder of the Premises Licence, or any other person who made relevant representations to the application may appeal against the Council's decision to the Justice Clerk at the Uxbridge Magistrates Court. Such an appeal may be brought within 21 days of receipt of this Notice of Decision. A copy of the appeal should be sent to the Council's Licensing Service.

The Licence Holder will be deemed to have received the Decision Notice, two days after the date on the accompanying letter, which will be posted by 1st class mail.

The meeting, which commenced at 10.00 am, closed at 12.08 pm.

These are the minutes of the above meeting. For more information on any of the resolutions please contact Neil Fraser on 01895 250692. Circulation of these minutes

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is to Councillors, Officers, the Press and Members of the Public.

**The public part of this meeting was filmed live on the Council's YouTube Channel to increase transparency in decision-making, however these minutes remain the official and definitive record of proceedings.**