

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (A) HELD IN COMMITTEE ROOMS 2/3, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON FRIDAY, 23 OCTOBER 2015 AT 10.00 AM

Present

Councillor R Williams – Chairperson

RD Jenkins                      HE Morgan

Officers:

Katia Daw                      Lawyer  
Rachel Morris                  Senior Licensing Assistant  
Andrew Rees                  Senior Democratic Services Officer - Committees

7.     APOLOGIES FOR ABSENCE

None.

8.     DECLARATIONS OF INTEREST

None.

9.     LICENSING ACT 2003: SECTION 51 - APPLICATION FOR REVIEW OF PREMISES LICENCE, SIMLA TANDOORI RESTUARANT, 83-85 BRIDGEND ROAD, ABERKENFIG, BRIDGEND

The Senior Licensing Assistant reported on an application for a review of the premises licence by the Chief Officer of Police in relation to the premises known as Simla Tandoori Restaurant, 83-85 Bridgend Road, Aberkenfig, Bridgend. She stated that the Premises Licence Holders are Mr Anker Miah and Mr Anwar Khan and the licence authorised the supply of alcohol, live music and recorded music Monday to Saturday 1000 – 0000 hours, Sundays 1200 – 2330 hours, Christmas Day 1200 – 2330 hours, Good Friday 1200 – 2330 hours and New Year's Eve as per the Regulatory Reform (Special Occasions Licencing) Order. The premises licence also authorises the provision of late night refreshment Monday to Saturday 2300 – 0000 hours, Sundays 2300 – 2330 hours, Christmas Day 2300 - 2330 hours, Good Friday 2300 – 2330 hours and New Year's Eve as per the Regulatory Reform (Special Occasions Licencing) Order.

The Senior Licensing Assistant informed the Sub-Committee that the application had been advertised in accordance with the regulations and there had been no representations received.

PC Ellis informed the Sub-Committee that he wished the Sub-Committee to consider additional information in relation to reported occurrences reported by staff or the public to the command and control room via the 999 emergency or 101 systems which he had already served on the premises licence holders. The premises licence holders' representative informed the Sub-Committee that he had requested to meet the police in advance of the hearing to discuss proposed conditions that he would be putting forward. He stated that there was nothing contained in the additional information proposed to be submitted by the police that was of any consequence. The legal officer stated that the weight of the additional information proposed to be submitted by the police would be the subject of legal advice to the Sub-Committee.

The Sub-Committee adjourned at 10.15am to consider whether to allow the additional information to be submitted by the police and reconvened at 10.19am having agreed to allow the additional information to be considered.

PC Ellis corrected page 12 of the application for the review of the premises licence made by South Wales Police relating to the Licensing Objectives in that there were 5 Section 17(2) power of entry warrants executed and not 3 and there 10 and not 9 Bangladeshi migrants found to be employed at the premises. The number arrested was corrected from 9 to 10, whilst 8 and not 7 had illegally entered the UK. PC Ellis informed the Sub-Committee that the United Kingdom Border Agency (UKBA) had undertaken intelligence led enforcement visits to the premises on 9 November 2006; 24 February 2011; 16 June 2012; 7 July 2012 and 25 July 2015. In response to a question from the Premises Licence Holders' representative, PC Ellis stated that penalties were only imposed in respect of the last enforcement visit.

PC Ellis commenced his submission by stating that the restaurant is authorised for licensable activity by a Premises Licence and the licence holders are, Ankar Miah and Anwar Khan, who have had an association with the premises dating back many years. Mr Anwar Khan is also the Designated Premises Supervisor (DPS). He stated that the Licensing Act 2003 "went live" on 24 November 2005 and both held positions of responsibility as licence holder and DPS respectively. However, since 25 October 2011 both have been joint holders of the Premises Licence. He stated that Ankar Miah first reported an incident to South Wales Police on 23 August 2003. Both Mr Khan and Mr Miah have been solely responsible for the premises for a prolonged period during which they have persistently failed to promote the licensing objectives. PC Ellis informed the Sub-Committee that the situation they now find themselves in is entirely of their own making.

PC Ellis emphasised to the Sub-Committee that it is important to note that in relation to reviews it must not only have regard to Section 11 of the Home Office Guidance but also Section 12 of the Council's own "Statement of Licensing Policy". In relation to Section 12 it states that "reviews represent a key protection for the community if problems arise at licensed venues". He stated that the review will demonstrate a systematic and deliberate failure to promote 2 key objectives namely, the prevention of both crime & disorder and public safety. He highlighted the following statement "Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership". PC Ellis informed the Sub-Committee that the Licensing Department of South Wales Police is an integral part of the Community Safety Partnership and that his statement did not emanate from the Chief Officer of Police but was emphasised at Section 2 of Home Office guidance which relates to the licensing objectives and in particular Sub-section 2.1 Crime & Disorder. He stated that the restaurant is a conduit for committing offences mainly the employment of numerous illegal migrants. Additionally the number of incidents recorded at the restaurant is considerably higher than those recorded at other Indian restaurants. He stated that they may be classed as being disproportionate for what is merely a restaurant. The financial penalty on an employer for engaging in the employment of an illegal migrant worker is highlighted within the review. PC Ellis also informed the Sub-Committee that if the UKBA is considering that such a fine should be imposed then the procedure on evidencing the offence is that a Referral Notice is served on the employer.

PC Ellis informed the Sub-Committee that the evidence collated was subsequently examined by the Home Office Civil Penalty Compliance Team (CPCT), Immigration Enforcement which determines whether the employer should be subject of a Penalty Notice under Section 15 of the Immigration, Asylum & Nationality Act 2006. To deter such criminality massive fines of up to £20,000 per worker can be served on employers by the Secretary of State. The employer may appeal against the penalty imposed.

However; there was a vast amount of documentation available electronically to help employers avoid committing immigration offences. There is also a help line manned by UKBA staff. PC Ellis referred to a document titled; "Home Office Checks To Ascertain If Someone Can Work In The UK", which is a simplistic staged and chronological check which enables employers to ascertain if a potential employee can work in the UK legally and asks pertinent questions for example: -

Does the worker have a UK passport?

Are they a British Citizen?

Do they possess a permit or visa showing that they have a right to work in the UK?

Do they have any other relevant documents entitling them to work in the UK?

PC Ellis stated that those relevant documents are listed in the guidance and if the answer to those questions is, "No" then the guidance is clear as it details that, "the worker may not be currently entitled to work in the UK". He also stated that extracts from other UKBA guidance appear in the review application. He informed the Sub-Committee that employers are given every assistance to thoroughly scrutinise potential staff and there was no reason for any employer to employ migrants who are not permitted to work. If an employee produces documentation to suggest he is in the UK legally then those documents can be verified on the Home Office website or UKBA can be contacted on their helpline telephone. He stated it was not just a case of merely accepting documentation provided to employers. That documentation must be checked in order to ascertain if it is legal or otherwise. He stated that licence holders who have previously been subject of the review procedure have informed various Sub-Committees that they were given documents which appeared credible. He indicated that this is misleading and is not accepted or indeed acceptable as those credentials must be substantiated. In relation to immigration offending arrest warrants issued under the Immigration Act 1971 are sworn out by UKBA Officers before a Justice of the Peace only if reliable information is received that immigration offences are being committed. He stated that they must have reliable intelligence to suggest that illegal migrants are employed at premises. South Wales Police work in conjunction with their partners at UKBA exchanging information and intelligence and often accompanying them on enforcement visits when immigration warrants are executed at premises. This partnership has evolved since an important part of Home Office licensing guidance relative to reviews was updated to specifically focus on enforcement around serious criminality involving the unlawful employment of illegal migrants.

PC Ellis informed the Sub-Committee of enforcement visits by the UKBA which has conducted intelligence led enforcement visits to the premises utilising power of entry immigration warrants granted at Swansea Magistrates Court under Section 17(2). He provided a breakdown of these warrants broken down as follows in date order from when the original warrant was executed: -

1<sup>st</sup> Occurrence 62060031755 of 9th November 2006, whereby 4 male employees who had illegally entered the UK were found to be working. 2 of them stated that they had visitor's visas but were unable to provide any evidence of the documents and in any event such a visa does not authorise the holder to work in the country. Of the 2 one was a failed asylum seeker.

2<sup>nd</sup> Occurrence 62110063156 of 24th February 2011, whereby 1 male migrant (aged 30) was working at the restaurant and enquiries revealed that he had unlawfully entered the UK and then claimed asylum. He was released with restrictions, one being that he reports to UKBA with another strict condition being that he does not work.

3<sup>rd</sup> Occurrence 62120191705 of 15th June 2012, whereby the same staff member who was arrested during execution of the second warrant on 24<sup>th</sup> February 2011 was again

found to be working despite not being permitted to. His asylum claim had been refused however; he had remained in the UK and was again arrested.

4<sup>th</sup> visit occurrence 62120217490 of 7<sup>th</sup> July 2012, whereby 1 male migrant (aged 23) was working at the restaurant who had entered the UK illegally. This migrant was using a false passport.

5<sup>th</sup> visit occurrence 1500266265 of 25<sup>th</sup> July 2015, whereby the UKBA conducted the latest enforcement visit to the premises and entry was gained via a warrant - again granted at Swansea Magistrates Court. The UKBA served a copy of the warrant on Anwar Khan who was present at the time of the visit. 11 male employees and 1 female were found to be working. Home Office identity checks proved that 1 (37yr old) had illegally entered the UK whilst a further 2 (aged 26 and 36) were "overstayers" in the UK and had no permission to work in this country. The UKBA subsequently served a Referral Notice on Ankar Miah and such notices inform offenders that the case is being considered by the Home Office and a fine, also known as a civil penalty, of up to £20,000 for each illegal worker can be imposed.

PC Ellis informed the Sub-Committee that a total of 10 employees had been arrested who have unlawfully entered or have illegally remained in the country with one being detained twice, 2 of these workers were classed as being "overstayers" in the UK.

PC Ellis also informed the Sub-Committee that offences committed by Anwar Khan and Ankar Miah have taken place over a 9 year period. He stated this is not only unacceptable but more importantly did not promote the licensing objectives. Furthermore he stated that there is an obvious need for persons to be employed but clearly those job opportunities have been denied to individuals legally entitled to work and it could be argued that Anwar Khan and Ankar Miah are exploiting the vulnerability of such persons. He stated that what is significant is that even if British nationals did not wish to fill those vacancies arguably they would be occupied by migrants who are in the UK legally and are also lawfully able to work.

PC Ellis informed the Sub-Committee that the following 3 offences have therefore been committed under the Immigration Act 1971 by the employees.

1. To enter/remain in the UK without leave is contrary to Section 24(1)(a) of the Immigration Act 1971 which carries a penalty of 6 months imprisonment and / or a fine not exceeding level five (£5,000) on the standard scale.
2. Knowingly remaining beyond the time limited by leave ("overstaying" in the UK) contrary to Section 24(1)(b)(i) of the Immigration Act 1971 which carries a penalty of six months imprisonment and / or a fine not exceeding level five (£5,000) on the standard scale. A person commits the offence on the day when he or she first knows that leave to enter or remain has expired, and continues to commit it until such time as his or her position is regularised, for example through a further grant of leave in any category.
3. Offence: Using and possessing a false document (i.e. passport) contrary to Section 26(1) d of the Immigration Act 1971, which carries a penalty of 6 months imprisonment and / or a fine not exceeding level five (£5,000) on the standard scale.

PC Ellis informed the Sub-Committee that the following offences have also been committed under the Immigration, Asylum & Nationality Act 2006 by the employer

1. Offence: Employ adult subject to control who had not been granted leave to enter / remain in UK contrary to Section 15

2. Offence: Employs another (the employee) knowing that that person is an adult subject to immigration control contrary to Section 21

The penalties for an employee in respect of both offences are: -

Indictment - imprisonment for a term not exceeding two years, a fine, or both.

Summary - imprisonment for a term not exceeding 12 months in England and Wales or a fine, or both.

PC Ellis referred to the Home Office Guidance issued under section 182 of the Licensing Act and specifically to Section 11 relates to reviews and Sub-section 11.5 which supports a number of key aims and purposes which include protecting the public from crime caused by irresponsible licensed premises. He stated that the Guidance in relation to the review process is specific and very clear and focuses on reviews arising in connection with crime, Sub-section 11.27 of the guidance highlights that certain criminality should be treated particularly seriously. These activities include the use of licensed premises: -

- For the sale and distribution of Class A drugs
- For the laundering of the proceeds of drugs crime
- For the sale and distribution of illegal firearms
- For the sale of alcohol to minors
- For prostitution or the sale of unlawful pornography
- By organised groups of paedophiles to groom children
- As the base for organised criminal activity, particularly by gangs
- For the organisation of racist activity
- For the promotion of racist attacks
- For unlawful gambling
- For the sale of smuggled tobacco and alcohol

PC Ellis informed the Sub-Committee that these are serious offences and there is obviously a growing concern with the number of migrants entering the UK illegally or remaining in the country unlawfully after their visa has expired coupled with the fact that these individuals are also working illegally that the Home Office has since included alongside these serious criminal activities the offence of knowingly employing a person who is unlawfully in the UK. He stated that 10 migrants have been illegal employed at the premises since November 2006 up to July 2015.

PC Ellis informed the Sub-Committee there are currently approximately 550 licensed premises located within Bridgend County Borough and outlined the overall picture of enforcement since 2005 when the Licensing Act was introduced South Wales Police. He stated that as the Act was in its infancy South Wales Police did allow a period of time for licence holders to acclimatise themselves with it and the first review application was not submitted until 2007. Since this time South Wales Police has had to review the authorisations of 27 premises in order to promote the licensing objectives. He stated that the Police did not propose that authorisations should be forfeited unless it is felt absolutely necessary to do so to promote the licensing objectives. There was therefore clearly an escalating problem of employing illegal migrants which has been recognised by the Home Office who have included measures to combat these offences in the Licensing Guidance. The Guidance unambiguously requires licensing committee's to address these matters very robustly. PC Ellis highlighted that the very nature of hearings are such that they centre on enforcement. He also highlighted that numerous licensing applications are received on a weekly basis which include Temporary licences

(known as TEN's), specification of new DPS's, transfers, variations of licences, minor variations and applications for the grant of new licences. He stated that South Wales Police only object to an extremely small percentage of these applications and review applications or objections to applications are brought with a very good reason to do so.

PC Ellis informed the Sub-Committee that incidents reported to South Wales Police via the 999 emergency or 101 non-emergency numbers were served on 16<sup>th</sup> October 2015 after a request from Whittingham's Solicitors. He stated that these incidents should not distract from the main thrust of the review and what was noteworthy about these occurrences is the quantity of them considering the premises are a restaurant.

PC Ellis informed the Sub-Committee that 3 conditions volunteered by the applicants and he referred to the Home Office Guidance licence conditions general principles and in particular Section 1.16 should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation. These conditions could have been volunteered after the first visit by the UKBA in 2006. He stated that a Minor Variation could have been submitted and the conditions appended to the licence. These conditions should have been volunteered after the second visit in 2011 or the third and fourth visits in 2012. He stated that the only reason they had been volunteered was that the licence was in serious jeopardy. PC Ellis requested the Sub-Committee revoke the premises licence.

The Sub-Committee referred to the 2 incidents in May and June where the police were called to the premises and questioned whether there were employees found to be working illegally at the premises. PC Ellis confirmed that there were persons found to be working illegally at the premises and this information had been passed on to the UKBA.

The Sub-Committee questioned the penalty imposed on the premises licence holders as a result of the breach of the Immigration, Asylum and Nationality Act 2006 on July 2015. The premise licence holders' representative informed the Sub-Committee that the maximum penalty which could be imposed was £20k and the premises licence holders had paid £14k as they had paid the fine during the discount period.

The Sub-Committee requested clarification on the enforcement visit by the police on 30 May 2015. PC Ellis informed the Sub-Committee that following the police being called to the premises, 4 people were found to be working illegally on 30 May 2015, with arrests taking place. The premises licence holders' representative informed the Sub-Committee that the premises had been run for some time with Mr Miah having been the licence holder for 20 years. PC Ellis informed the Sub-Committee that there was no record of Mr Miah being responsible for the premises prior to 2003.

In response to a question from the premises licence holders' representative as to how the premises licence holders had failed to promote the licensing objectives, PC Ellis stated that arrests had been made at the premises. The premises licence holders' representative stated that there had been no underage sales at the premises or risk to public safety and that the review application should only have the Prevention of Crime and Disorder licensing objective ticked. The Legal Officer advised that the police should only rely on the prevention of Crime and Disorder in their review application. In response to a question from the premises licence holders' representative PC Ellis stated there had been no underage sales to children or issues relating to the prevention of public nuisance at the premises. The premises licence holders' representative questioned the basis for the review application. PC Ellis stated that the review was being brought on the basis of the arrests made by the UKBA of illegal immigrants and that the premises licence holders were not promoting the Prevention of Crime and Disorder licensing objective.

The premises licence holders' representative questioned how the premises were a conduit for offences. PC Ellis informed the Sub-Committee that it was in relation to the employment of illegal migrants and did not relate to other offences. The premises licence holders' representative questioned the penalty imposed as a result of 2 people found to have breached immigration control. PC Ellis stated that the penalty related to 2 people who were over stayers, but was not aware of the financial penalty imposed by the UKBA. The premises licence holders' representative questioned the police in relation to their evidence that vulnerable people were being exploited. PC Ellis stated that there was evidence of migrants coming into the UK in HGVs covertly. In response to a question from the premises licence holders' representative PC Rowlatt stated that the police did not distinguish between the premises licence holders knowingly or not knowingly employing illegal migrants. The premises licence holders' representative stated that it was important for the Sub-Committee to understand the difference between the premises licence holders knowingly employing illegal migrants or not and whether the premises licence holders had checks were in place. He stated that the UKBA would know whether or not the premises licence holders had been charged with knowingly or not knowingly employing illegal migrants. PC Ellis informed the Sub-Committee that the same person had been arrested on 2 occasions on 24 February 2011 and again on 7 July 2012 and therefore the employers would have knowingly employed that person who was an illegal migrant. The premises licence holders' representative questioned whether prosecutions had arisen as a result of the criminal offences identified. PC Ellis stated that prosecutions had not been brought by the UKBA. The premises licence holders' representative informed the Sub-Committee that he was attempting to establish whether the premises licence holders had knowingly employed illegal migrants and whether action had been taken by the UKBA. PC Ellis stated that the police had not been informed whether the UKBA had taken action against the premises licence holders. The UKBA officer informed the Sub-Committee that the UKBA would not take forward a matter to prosecution until it had received a defence.

The premises licence holders' representative informed the Sub-Committee that revocation of the premises licence would be a severe course of action and that the police were relying on 5 offences in their review application and questioned whether the UKBA had undertaken enforcement action as a result of visiting the premises in 2006. PC Ellis stated that he had not been informed of penalties imposed by the UKBA. In response to a question from the premises licence holders' representative, PC Ellis stated that he was unaware of the action taken by the UKBA on previous enforcement as the police had only been working with the UKBA over the last 18 months. The premises licence holders' representative informed the Sub-Committee that it should only be considering the enforcement action taken during 2015. PC Ellis stated that there had been arrests each time the UKBA had undertaken enforcement visits at the premises and whether it had resulted in penalties being imposed on the premises licence holders was irrelevant. The Legal Officer requested clarification whether the police were pursuing the review application based on the breach in July 2015 and not the 4 warrants which did not result in prosecutions. PC Ellis stated that the application for the review was based on the 5 warrants served.

The Sub-Committee adjourned at 11.08am and reconvened at 11.18am.

The premises licence holders' representative referred to the Civil Penalty Notice dated 17 September 2015 in relation to suspected breaches at the premises and that the premises licence holders had paid the penalty early in order to pay the discounted amount. The premises licence holders' representative submitted proposed conditions for consideration by the Sub-Committee. PC Rowlatt stated that this evidence had not been seen prior to the hearing and that the police were working within sections 11.27 and 11.28 of the Home Office Guidance. The premises licence holders' representative

informed the Sub-Committee that the proposed conditions had been sent to the police by email on 21 October 2015 at 3.45pm.

The premises licence holders' representative informed the Sub-Committee that in some cases it would be possible under the Guidance to propose conditions as long as the conditions did not duplicate existing legislation. PC Rowlatt stated that proposed conditions had not been served on the Responsible Authorities and believed that it did not support section 1.16 of the Guidance. She stated the police would not accept the proposed conditions being put forward by the premises licence holders.

The premises licence holders' representative commenced his submission by referring to the statement of PC Ellis whereby he had said the premises licence is in serious jeopardy. He stated that the premises licence holders accept that revocation of the premises licence is a possibility. He informed the Sub-Committee that the premises licence did not authorise live music or recorded music. The lack of alcohol provision at the premises would cause serious problems to the premises licence holders as they could only serve food up until 2300 hours. He stated that the premises licence holders had been in business for 20 years and had been run without any of the usual problems of underage drinking and public nuisance normally associated with licensed premises. Neither had there been any representations from the other Responsible Authorities or from members of the public. He stated that other than illegal migrants being employed at the premises there had been no other problems at the premises. The premises are very popular, busy and thriving and are a long established family business, employing family members and friends. The premises licence holders employ 5 full time and 3 part-time members of staff at the restaurant.

The premises licence holders' representative informed the Sub-Committee that at the time 3 people were arrested at the premises, 1 penalty was not imposed as the person was washing up in the kitchen, 2 people were found to be working illegally at the restaurant. He stated that the premises licence holders take on temporary members of staff during holiday periods. The premises licence holders normally check all staff have the necessary paperwork which permit them to work in the UK which they retain at the premises. The 2 waiting staff employed on a temporary basis did not bring the required documentation with them and the premises licence holders accept full responsibility for employing them without having checked they were able to work legally in the UK.

The premises licence holders' representative therefore proposed conditions which would help all concerned. In the event of the premises licence being revoked, the premises licence holders would still be able to continue trading but would not be able to sell alcohol. Customers wishing to drink alcohol to enjoy with their meals would have to bring alcohol with them. The proposed conditions would require the premises licence holders to be in possession of the necessary paperwork and to carry out checks before allowing any person to commence work at the premises. A log would be kept with copies of the paperwork for each member of staff to be retained at the premises and to be made available to the police or other official agency on request.

The premises licence holders' representative proposed the following 3 conditions for the Sub-Committee's consideration:

Condition 1 – Before allowing any person to commence work at the premises the premises licence holder(s) shall ensure that the Annex B: Employers Right to Work Checklist contained in the current Home Office guidance for prevention of illegal working in the UK is completed for that person.



Condition 2 – A copy of the completed Annex B checklist be retained by the premises licence holder for the period during which the person is employed at the premises and for at least 12 months after such employment ceases.

Condition 3 – Copies of the completed Annex B checklist to be produced on request to a police or authorised officer.

The premises licence holders' representative informed the Sub-Committee that the solution would be to allow the business to continue as it had been in existence for the past 20 years. He stated that the premises licence holders were fully aware of the seriousness of the review application and realised that the premises licence is on a knife edge.

In response to a question from the premises licence holders' representative, Mr Miah stated that he would in future insist on checking temporary staff hired to work in the restaurant are in possession of a valid passport and are permitted to work in the UK. If he was unable to recruit temporary staff to cover for staff holidays he would close the restaurant temporarily.

In response to a question from the Sub-Committee, Mr Miah stated that he would normally recruit staff through Job Centre Plus. In response to a further question from the Sub-Committee, Mr Miah stated that he paid the employees found to be working illegally by cash based on the minimum wage and did not pay tax or National Insurance.

PC Rowlatt questioned the premises licence holder as to how their procedures for taking on temporary staff had gone wrong. Mr Miah informed the Sub-Committee that he had requested the relevant paperwork from the temporary employees but they were not in possession at the time they turned up for work. Mr Miah stated that it was a mistake on his part in not insisting the temporary employees had the correct documentation to be able to work. PC Rowlatt questioned the premises licence holders as to how they had recruited the temporary staff. Mr Miah stated that they would from time to time receive telephone calls from people enquiring as to the availability of temporary work and if they did not have work for them at that time they would normally take a note of their telephone number to contact them when they had work. Mr Miah also informed the Sub-Committee that friends who are employed at the restaurant are also the subject of checks which confirm their eligibility to work in the UK. Those details are then passed on to the premises licence holders' accountant. Mr Miah stated that he would check whether employees had a valid UK passport and National Insurance number and proof of address.

PC Rowlatt asked the premises licence holders to clarify their understanding of the difference between a valid and a fake passport. Mr Miah stated that if they had suspicions regarding a person's passport they would contact the UKBA.

PC Rowlatt questioned the steps the premises licence holders would take regarding the sale of alcohol and the employment of temporary staff in the event that no action was taken by the Sub-Committee in respect of the premises licence. Mr Miah stated that temporary staff would not serve alcohol and that he always worked in the restaurant. The 2 people the subject of the Civil Penalty Notice were working in the kitchen.

In response to a question from PC Ellis, Mr Miah confirmed that he was present at the premises when the first of the five warrants were executed by the UKBA. PC Ellis questioned the reasons why the premises licence holders employed illegal migrants. Mr Miah stated that he did not realise that the passports were false and will ensure that employees' passports were valid. He informed the Sub-Committee that he had not previously checked employees' right to work with the UKBA.

The Legal Officer asked PC Ellis to clarify the number of arrests made at the premises. PC Ellis stated that 10 arrests were made at the premises 9th November 2006, 24th February 2011, 15th June 2012, 7 July 2012 and 25 July 2015.

The premises licence holders' representative informed the Sub-Committee that sweeping generalisations had been made by South Wales Police that the premises are a conduit for crime. He stated the premises had been run successfully by the premises licence holders for the past 20 years, albeit arrests were made at the premises for employing illegal migrants resulting in the premises licence holders receiving a Civil Penalty Notice in 2015. The premises licence holders' representative informed the Sub-Committee that the premises licence holders had employed people at the restaurant they should not have and had paid a penalty of £14k. He stated that a judgement needed to be taken on whether the premises licence holders had knowingly or not knowingly employed illegal migrants at the premises. He also stated that the restaurant has been an asset to the community of Aberkenfig over the past 20 years.

The premises licence holders' representative informed the Sub-Committee that the proposed conditions offered by the premises licence holders would be a means by which the operation of the premises could be monitored. He stated that the premises licence holders hold documentation on all its full time employees but had not secured the necessary documentation on the employment of temporary staff.

PC Ellis in his summing up stated that the offences committed to date have been unacceptable and the level of enforcement conducted by the UKBA has been treated with contempt. He stated that the options available to the Sub-Committee are clearly laid out in the guidance which was replicated in the report before the Sub-Committee. PC Ellis referred to Sub-section 11.19 which states that, "Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps and that any decision made by the Sub-Committee must be taken following consideration of the representations received with a view to promoting the 4 licensing objectives.

- 1) Take no action – which is not a course of action South Wales Police expect the Sub-Committee to take as it will not promote the objectives.
- 2) Modify conditions - there seemed little point in amending or adding conditions at a premises where management has so persistently committed serious offences over a prolonged period of time. PC Ellis referred to the arrest made at the premises in 2011 then that employee was released with restrictions with one being that he did not work. However; the same staff member found working during execution of the second warrant in June 2012.
- 3) Exclude a licensable activity - the authorisation permits the sale of alcohol, live and recorded music and the provision of hot food. However; music is entirely superfluous to an Indian restaurant and removing those activities would have no effect. Since 7<sup>th</sup> April 2015 the 2014 Deregulation Order exempts premises such as the Simla up to 2300 hours from having a licence for live and recorded music. The main activities are the supply of alcohol and provision of hot food.

PC Ellis informed the Sub-Committee the following is a condition of the premises licence:-

- 1) Intoxicating Liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.

PC Ellis informed the Sub-Committee that if the provision of hot food was removed the licence would effectively be revoked as alcohol cannot be supplied without it. Due to the serious matters outlined in this review South Wales Police do not believe that excluding a licensable activity only will promote the objectives.

- 4) Suspend the Premises Licence for a period not exceeding three months – PC Ellis stated that if the Sub-Committee determine to suspend the authorisation then this course of action would promote the objectives but would be a short term fix only and given the history of the licence holders they would quickly revert to type.
- 5) Remove the DPS – PC Ellis stated that there seemed little point in removing Anwar Khan, if this were to happen he is not only one of the protagonists but also the licence holder and will have control of whoever; he specifies as a new DPS.
- 6) Ultimately revoke the licence – South Wales Police have grave concerns over the premises and feel that this will not change due to the repeated offending in relation to a number of Immigration Acts.

PC Ellis informed the Sub-Committee that what should be of serious concern is the attitude displayed to the authorities to successive enforcement visits by the UK Border Agency. Numerous arrests have taken place and have been ignored with no effect whatsoever. He stated there is a clear indication that nothing will change and presents as a failure to promote the objectives. He also stated that Sub-section 11.28 of the Home Office guidance is very clear in that it not only instructs responsible authorities to use reviews effectively to prevent the offences referred to from being committed..... but when reviews arise in such circumstances it expects licensing sub-committees to seriously consider revoking the licence if the crime prevention objective is being undermined. What is very significant is that it goes on to suggest that this should be the course of action “even in the first instance.” This is an area of the guidance which offers committees little room for manoeuvre, 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. PC Ellis stated that offences which seriously impact on the Crime Prevention and Public Safety objectives and South Wales Police suggest that, given the guidelines specific to these offences then these alone should warrant revocation of the licence.

PC Ellis informed the Sub-Committee that previous enforcement has been wholly ineffective and South Wales Police are of the opinion that offending has not been committed as a consequence of ignorance or error but has been an intentional, persistent and determined effort over a prolonged period for profit. He believed that the situation will not change and the offending committed to date merits revocation of the premises licence. He stated that should the Sub-Committee decide that revoking the licence will promote the licensing objectives then the respondent will lose just one hour of licensable activity Monday to Saturday and 30mins on a Sunday. South Wales Police feel is unfortunate, given the level of offending, the decision will mean that is the respondents will still be able to provide hot food up until 22.59 hours. The Premises Licence Holder will not of course be permitted to engage in the sale of alcohol.

The Sub-Committee adjourned at 12.05pm and reconvened at 14.08pm wherein it was:

**RESOLVED:** That the Sub-Committee has considered the application for the review of the Premises License of the Simla Tandoori Restaurant. The Sub-Committee has heard the representations from the Police as well as those from the Premises License holder and his representatives. In

dealing with the Police's concerns the Sub-Committee has heard that they brought the review as they were concerned that matters had arisen in connection with two of the Licensing Objectives:-

1. The prevention of Crime and Disorder
2. Public Safety

In dealing with the two Licensing Objectives, the police refer to instances where persons were employed who could not legally be so employed. There were preliminary discussions regarding other incidents which were reported to the police over the recent years, however this matter was not pursued. As such, the sole matter for the Sub-Committee to consider is whether the 5 instances where in total 10 persons were found at the premises who were subject to arrest by the UKBA undermine the Licensing objectives mentioned above.

The Sub-Committee heard that the following took place:

- 9<sup>th</sup> Nov 2006 – 4 persons found who could not legally work in the UK (1 failed asylum seeker and 2 illegal immigrants)
- 24<sup>th</sup> February 2011 – 1 person found who could not legally work in the UK
- 15<sup>th</sup> June 2012 - – 1 person found who could not legally work in the UK - importantly the same person as above 16 months before
- 7<sup>th</sup> July 2012 – 1 person found who could not legally work in the UK
- 25<sup>th</sup> July 2015 – 11 people generally working at the premises, 8 legally and 3 illegally (2 overstayers).

With regard the individuals who were found to working illegally, it is unclear how they came to be in the country. The Sub-Committee accept that this group could include vulnerable persons but there is no evidence they did on this occasion. The Sub-Committee has however borne in mind how serious this conduct is to be considered by Government and the reasons for this.

The Sub-Committee accept that there has not been any prosecution for either the more serious (knowingly) or less serious (simply employing) offences of employing illegal immigrants. However it notes that the criminal sanctions are different to the licensing regime. Even if knowingly was not proved in a criminal court, this would

not bind the Sub-Committee. Further, the decision not to prosecute does not fetter the decision of the Sub-Committee.

The Sub-Committee has heard from the PLH that after the first instance in 2006 he tightened his procedures and now asks for passports etc. to be produced before employing staff (he even records his son's NI in his staff book). The problems put forward by the PLH are in how he recruits temporary staff to cover brief absences. The Sub-Committee heard that he cannot use the job centre as he would generally, to recruit permanent staff and instead must rely on casual staff who have only made contact by phone. He states he would ask them for proof of identity, but if they said they had forgotten and would bring it later he would accept this and still let them start work. In hind sight, he accepts that this was wrong and states he would not do this again. If temporary staff cannot evidence their entitlement to work, he will not employ them in future, even if this means he will need to temporarily close. He states that these temporary staff did not at any point have any dealings with alcohol and were limited to working in the kitchen. This mitigation has been taking into account by the Sub-Committee.

Of particular concern to the Sub-Committee are the numbers of occasions illegal workers have been found at the premises and that on two occasions the same person was employed despite the prohibition being placed on him working after the first visit.

The Sub-Committee has considered the options available to them including the ability to modify or add conditions. The Sub-Committee has considered and received advice on paragraph 1.16 of the statutory guidance and the case law. The Sub-Committee has considered the conditions put forward by the PLH however they feel this would be inadequate. They feel that after 2006 when the PLH was advised what checks to make and starting his staff record keeping book, he was already aware of his duties and what was required of him.

Further, the Sub-Committee has borne in mind paragraph 11.27 of the statutory guidance and note that certain criminal activity may arise in relation to licensed premises which must be treated particularly seriously. This list includes knowingly employing a person who is unlawfully in the UK or who cannot be lawfully employed.

The Sub-Committee has considered the evidence and feel that the PLH did knowingly employ such persons on several occasions. This has cumulated in the PLH receiving a civil penalty notice in the sum of £14,000.

Given the serious nature of this, the fact that this involved 10 such employees over 5 visits, and taking into account the guidance at paragraph 11.28 that states that revocation (even in the first instances) should be seriously considered if the crime prevention objective is being undermined through the premises being used to further crimes, the Sub-Committee does not feel that this case can be dealt with in any way other than revocation.

Taking into account all of the above the Sub-Committee considered that for the promotion of the licensing objectives aforementioned it is appropriate to revoke the licence.

The meeting closed at 2.17 pm