

Cyngor Bwrdeistref Sirol



Darren Mephram
Chief Executive

© Crown Copyright and database right 2015. Ordnance Survey 100023405.

Aerial Imagery: Cities Revealed aerial photography copyright The Geoinformation Group 2011.

Countywide Council for Wales, © Crown Copyright and database right 2015, Ordnance Survey 100018813.

Forestry Commission, © Crown Copyright and database right 2015. Ordnance Survey 100025498.

SIMLA TAKEAWAY

1:500

Time of Plot:
13:59

Date of Plot:
08/10/2015

Plot generated by:

Department :

COMMITTEE REPORT



**Application for Review of a Premises Licence under
Section 51 of the Licensing Act 2003**

(1)

Reference number:
B.3-266/2015

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

(2) **We South Wales Police**

Apply for the review of a premises licence for the premises described in Part 1 below

Part 1 - Premises details

Postal address of premises: SIMLA TANDOORI RESTAURANT, BRIDGEND ROAD	
Post town: ABERKENFIG, BRIDGEND	Postcode (if known): CF32 9BA
Telephone number: (01656) 729162	

Name of the premises licence holder: ANKAR MIAH AND ANWAR KHAN

Number of the premises licence holder: BCBCLP108, ISSUE 2 OF 25/10/2011
--

Part 2 - Applicant details

I am

1) an interested party (Please complete section (A) or (B) below)

- a) a person living in the vicinity of the premises
- b) a body representing persons living in the vicinity of the premises
- c) a person involved in business in the vicinity of the premises
- d) a body representing persons involved in businesses in the vicinity of the premises

Please tick ✓/yes

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Delete any words that do not apply

(1) Insert name and address of relevant licensing authority and its reference number (optional)

(2) Insert name(s) of applicant(s)

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)

Licensing Act 2003

Section 51 and 87

Mr

Mrs

Miss Ms

Other title
(for example, Rev)

--	--

Surname

First Names

Please Tick / Yes

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

I am 18 years old or over

--	--	--	--	--	--

Current address

Post town

Postcode

--	--

Daytime Contact telephone number

Email Address
(optional)

(B) Details of other applicant

Name and Address

Post Town

Postcode

--	--

Date of Birth

Day	Month	Year

Telephone Number (If any)

C) Details of Responsible Authority (please see guidance note 5)

South Wales Police

The Chief Officer of Police Chief Constable 4395 Vaughan Police Headquarters Cowbridge Road	
Post Town Bridgend	Postcode CF31 1BZ

Telephone number	(01656) 655555
Email Address (Optional)	

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

Please tick one or more boxes ✓

- | |
|--|
| 1) The Prevention of Crime and Disorder |
| 2) Public Safety |
| 3) The Prevention of Public Nuisance |
| 4) The Protection of Children from Harm |

✓
✓

Please state grounds for review (please see guidance note 1)
Please provide as much information as possible to support the application (please see guidance note 2)

The grounds for this review are based on promoting **2** key licensing objectives and the application is based on a failure to promote the objectives.

THE PREMISES LICENCE HOLDERS

Ankar Miah and **Anwar Khan** are Bangladesh born British citizens who have an association with the restaurant dating back many years.

The Licensing Act 2003 "*went live*" on **24th November 2005** and both held the principal positions of responsibility at the premises i.e. licence holder and Designated Premises Supervisor (DPS) respectively.

Since **25th October 2011** both have been joint holders of the Premises Licence.

THE PREMISE

The business is located in a semi-detached building situated in Bridgend Road, Aberkenfig which is the main thoroughfare through the village and is the heart of the commercial area which comprises a considerable number of businesses including a high concentration of licensed premises.

THE PREMISES LICENCE

The provision of late night refreshment is the supply of hot food or hot drink between 23.00 and 05.00 hours.

It is important that the Sub-Committee familiarise themselves with the licence briefly however; the following activity and opening timings are permitted: -

The licensable activities authorised by the licence are:

Supply of alcohol
Live music
Recorded music
Provision of late night refreshment

Standard times the licence authorises the carrying out of licensable activities:

Monday to Saturday: 10.00 – 00.00 hours
Sunday: 12.00 – 23.30 hours

Opening hours of the premises:

An additional 30 minutes wind down period.

There are mandatory conditions attached at **Annex 1** and three conditions attached at **Annex 2** whilst there are no conditions appended to **Annex 3**.

THE LICENSING OBJECTIVES

THE PREVENTION OF CRIME AND DISORDER

Between **2006** and **July 2015** the United Kingdom Borders Agency (UKBA) conducted intelligence led enforcement visits to the restaurant whereupon **3** Section 17(2) power of entry warrants were executed and **9** Bangladeshi migrants were found to be employed at the premise. All **9** were arrested.

7 had illegally entered the UK whilst a further **2** were what the agency describes as “*overstayers in the UK*”, i.e. individuals whose visa has expired or those who are prevented from working under the terms of their visa.

None of them were permitted to work.

I am unaware if **Anwar Khan** and **Ankar Miah** were among those present when the first two warrants were executed but they were during the most recent arrests as the warrant was served on **Anwar Khan** whilst **Ankar Miah** was given a *Referral Notice*.

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.

Employing or knowingly employing an individual who has no authorisation to work and entering the UK illegally are contrary to immigration legislation and are separate offences which are highlighted in more detail within the review.

What should be of serious concern to the Licensing Sub-Committee is that **Ankar Miah** and **Anwar Khan** had already committed offences in **2006** but made a decision to commit the very same offences in **2011** and again more recently.

The immigration offences alone are those which Home Office guidance strongly suggests should trigger the review procedure and in so doing goes further and directs Licensing Sub-Committees to seriously consider revocation of the licence even in the first instance.

However; one will note that offending has taken place on **3** occasions.

There are also a number of other incidents of crime and disorder which have been reported to South Wales Police via the 101 public service centre or the 999 emergency systems.

PUBLIC SAFETY

The objective is compromised as nothing is known of the antecedent history of those migrants who have illegally entered the UK.

BRIDGEND COUNTY BOROUGH COUNCIL'S "STATEMENT OF LICENSING POLICY"

Section 12 refers to REVIEWS OF LICENCES:

Paragraph 12.1 *"Reviews of Premises Licences represent a key protection for the community in respect of problems during the term of a Premises Licence."*

HOME OFFICE GUIDANCE UNDER SECTION 182 OF THE ACT

Section 11 relates to REVIEWS: -

Sub-section 11.1 *"The proceedings set out in the 2003 Act for reviewing Premises Licences represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a Premises Licence."*

"Reviews arising in connection with crime"

11.27 *"There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously."*

One of these activities is, *"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."*

The aforesaid guidelines are extremely specific to this application as they have been ignored.

Offences have been committed under the Immigration Act 1971 and the Immigration, Asylum & Nationality Act 2006.

The guidelines issued by UKBA are clear and unambiguous and are freely available to all employers on the Home Office website.

Similarly guidance under the Licensing Act requires a clear emphasis on promoting the licensing objectives.

As a number of individuals have been illegally employed there are clearly working opportunities available however; they have been denied to persons who are lawfully able to work.

It is also arguable whether transient non-British nationals who speak very little or no English and have little

or indeed no knowledge of licensing law promotes the licensing objectives.

Licence holders have attempted to absolve themselves of any blame for employing such individuals by indicating that they have been supplied with fraudulent identification documents.

This is not only inaccurate and misleading but demonstrates a complete lack of due diligence.

UKBA offer an employee checking service which is freely available to employers who can and must verify the immigration status of potential migrant employees by conducting document checks.

There is also a help line manned by UKBA officials.

IMMIGRATION ISSUES

The guidelines are clear and unambiguous and are freely available to all employers on the Home Office website in detailed documents which the Sub-committee are invited to peruse such as: -

AN EMPLOYERS GUIDE TO RIGHT TO WORK CHECKS FULL GUIDE FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING IN THE UK

The following has been extracted from the Home Office UKBA website and is a:

SUMMARY GUIDE FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING IN THE UK

“Illegal working has harmful social and economic effects on the UK; it undercuts British businesses and their workers that stay within the law and exploits migrant workers. As long as there are opportunities for illegal working the UK will be an attractive place for illegal migrants. That is why we need to put a stop to employers breaking the law by taking tough action against those who do so.

There is evidence that some workers employed illegally are paid less than the minimum wage, do not pay tax, and may be doing dangerous work that breaks health and safety regulations. Employers who use illegal workers may do so because they want to avoid providing minimum standards, such as the National Minimum Wage and paid holidays. This is harmful to the workers involved and enables dishonest employers to gain an unfair advantage over competitors who operate within the law”.

Illegal working is defined in more detail below but briefly persons working unlawfully include: -

- students with expired visas
- students working more hours than they are allowed to
- persons who work on a visitor's only visa
- persons who have illegally entered or unlawfully remain in the UK

IMMIGRATION, ASYLUM & NATIONALITY ACT 2006 (KNOWN AS THE 2006 ACT)

The following information is freely available on the Home Office UKBA website and is summary guidance for employees and Human Resources (HR) staff involved in recruiting people and aims at preventing illegal working in the UK: -

It contains important information and advice on:

- *the law on illegal working*
- *your role and duty as an employer*
- *the document checks you should carry out*
- *the various documents you could be given*
- *the various types of immigration statuses held by people; and*
- *the consequences if you do not carry out your duty and UKBA find you employing an illegal worker.*

THE LAW AND YOUR DUTY AS AN EMPLOYER

"The law on preventing illegal working is set out in sections 15 to 25 of the 2006 Act.

These rules came into force on 29th February 2008.

You are breaking the law if you employ a person who does not have the right to work in the UK.

You can be fined up to £20,000 for each illegal worker or face criminal prosecution."

YOUR DUTY UNDER THE 2006 ACT

"Under the 2006 Act you have a duty to prevent illegal working by carrying out document checks to confirm if a person has the right to work in the UK.

You should check and keep copies of original, acceptable documents before someone starts working for you.

If a person has a time limit on their stay then you should carry out repeat checks at least once every 12 months.

If a person has a restriction on the type of work they can do and, or, the amount of hours they can work, then you must not employ them in breach of these restrictions.

You should also verify that a person has the right to work when certain documents or scenarios are presented to you.

You can find out more about carrying out document checks in the section 'Right to work document checks'.

This duty applies to anyone who starts working for you on or after 29 February 2008."

PENALTIES IF YOU FAIL TO CARRY OUT YOUR DUTY

If you do not carry out these checks you may be required to pay a fine, known as a civil penalty, under Section 15 of the 2006 Act if you employ an illegal worker.

An illegal worker is defined as someone who:

• ***is subject to immigration control; and***

• ***is aged over 16; and***

• ***is not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:***

is invalid,

has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise, or

is subject to a condition preventing them from accepting the employment.

A civil penalty up to a maximum amount of £20,000 for each illegal worker can be imposed on you.

We can serve you with a Notice of Liability to pay a penalty for a specific amount on behalf of the Secretary of State."

A Notice of Liability has since been replaced by a Referral Notice.

SECTION 10 OF THE IMMIGRATION & ASYLUM ACT 1999

Section 10 contains the provisions under which certain categories of people who are in the UK unlawfully may be subjected to administrative removal procedures i.e. deportation.

A person who is not a British citizen may be removed from the UK, in accordance with directions given by an immigration officer, if:

He/she does not observe a condition of his limited leave to enter/remain or remains beyond the period of his limited leave.

CRIMINAL OFFENCES COMMITTED UNDER THE IMMIGRATION ACT 1971 BY EMPLOYEES

1) Offence: Enter/remain in the UK without leave contrary to Section 24(1)(a)

Penalty: Six months imprisonment and / or a fine not exceeding level five (£5,000) on the standard scale.

2) Offence: Knowingly remaining beyond the time limited by leave ("overstaying" in the UK) contrary to Section 24(1)(b)(i)

Penalty: 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.

CRIMINAL OFFENCES COMMITTED BY ANWAR KHAN AND ANKAR MIAH AS EMPLOYERS

Anwar Khan and Ankar Miah are also liable for the offence of aiding and abetting employees to enter the

UK without leave or remain in the UK unlawfully as they are providing regular job opportunities for such individuals.

OFFENCES UNDER THE IMMIGRATION, ASYLUM & NATIONALITY ACT 2006

Section 15

- 1) It is contrary to this section to employ an adult subject to immigration control if:
- a) He has not been granted leave to enter/remain in the UK or
 - b) His leave to enter/remain in the UK:
 - i) Is invalid
 - ii) Has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise) or
 - iii) Is subject of a condition preventing him from accepting the employment

Section 18

1) A sum payable to the Secretary of State as a penalty* under Section 15 may be recovered by the Secretary of State as a debt due to him.

** Where a breach of Section 15 has occurred on or after 16th May 2014, the maximum civil penalty amount that can be imposed increased from £10,000 to £20,000 per illegal worker.*

One will note that the penalties for employing such persons are extremely severe but this has not deterred the management.

Section 21

- 1) A person commits an offence if he employs another (the employee) **KNOWING** that that person is an adult subject to immigration control and that
- a) He has not been granted leave to enter/remain in the UK or
 - b) His leave to enter/remain in the UK:
 - j) Is invalid
 - iv) Has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise) or
 - v) Is subject of a condition preventing him from accepting the employment

Penalty: 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.

REVIEWS - GENERAL

A considerable number of premises within the borough have been subject of varied enforcement and licence holders have been given advice, received verbal and written warnings and had meetings with South Wales Police which are designed to make management aware of police concerns to encourage them to address the problems being experienced.

There have also been prosecutions resulting in offenders receiving substantial fines as well as having their Personal Licences suspended (alcohol only).

The review procedure has also been utilised and licences have been suspended and restricted conditions have been appended to authorisations including a reduction of opening hours.

Ultimately licences have been revoked including those of 7 premises where migrants were illegally employed and offences committed.

CONCLUSION

In order to promote the licensing objectives South Wales Police feel that there is no alternative but to review the Premises Licence given the seriousness and persistence of the offending and:-

- the clear guidelines given by the Home Office in respect of the serious offences committed under the Immigration Acts
- the number of like offences committed
- the concerns of both South Wales Police and the Home Office of employing illegal migrants
- the impact on these illegal activities on the licensing objectives

As previously highlighted reviews represent a key protection for the community in respect of problems which arise during the term of an authorisation.

The guidance dictates that licensing authorities, the police and other law enforcement agencies will use the review procedures effectively to deter criminal activities one of which is the employment of 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.

Particular focus is placed on reviews in connection with crime which details that the immigration offences alone should be treated very gravely and lead to review and emphasises that revocation of the licence, even in the first instance, should be seriously considered by Sub-Committees if it is determined that the premise is being used to further crimes which impacts on the crime prevention objective.

This is such a case as the takeaway is being used to commit offences under the Immigration Act and the Immigration, Asylum & Nationality Act.

The latter offence in itself warrants revocation and South Wales Police respectfully suggest that the situation will not change and feel that the only option open which would address the systematic failures outlined in these submissions and promote the objectives is to **REVOKE THE PREMISES LICENCE**.

Please tick ✓ yes

Have you made an application for review relating to these premises before?

If yes, please state the date of that application

Day		Month		Year	

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

None

Please tick ✓/yes

• I have sent copies of this form and enclosures to the responsible authorities and the premises license holder

• I understand that if I do not comply with the above requirements my application will be rejected

It is an offence, liable on conviction to a fine of up to level 5 on the standard scale, under section 158 of the licensing act 2003 to make a false statement in or in connection with this application

Part 3 - Signatures (please read guidance notes 3 and 4)

Signature if applicant or applicant's solicitor or other duly authorised agent (please read guidance note 4)
If signing on behalf of the applicant please state in what capacity.

Signature

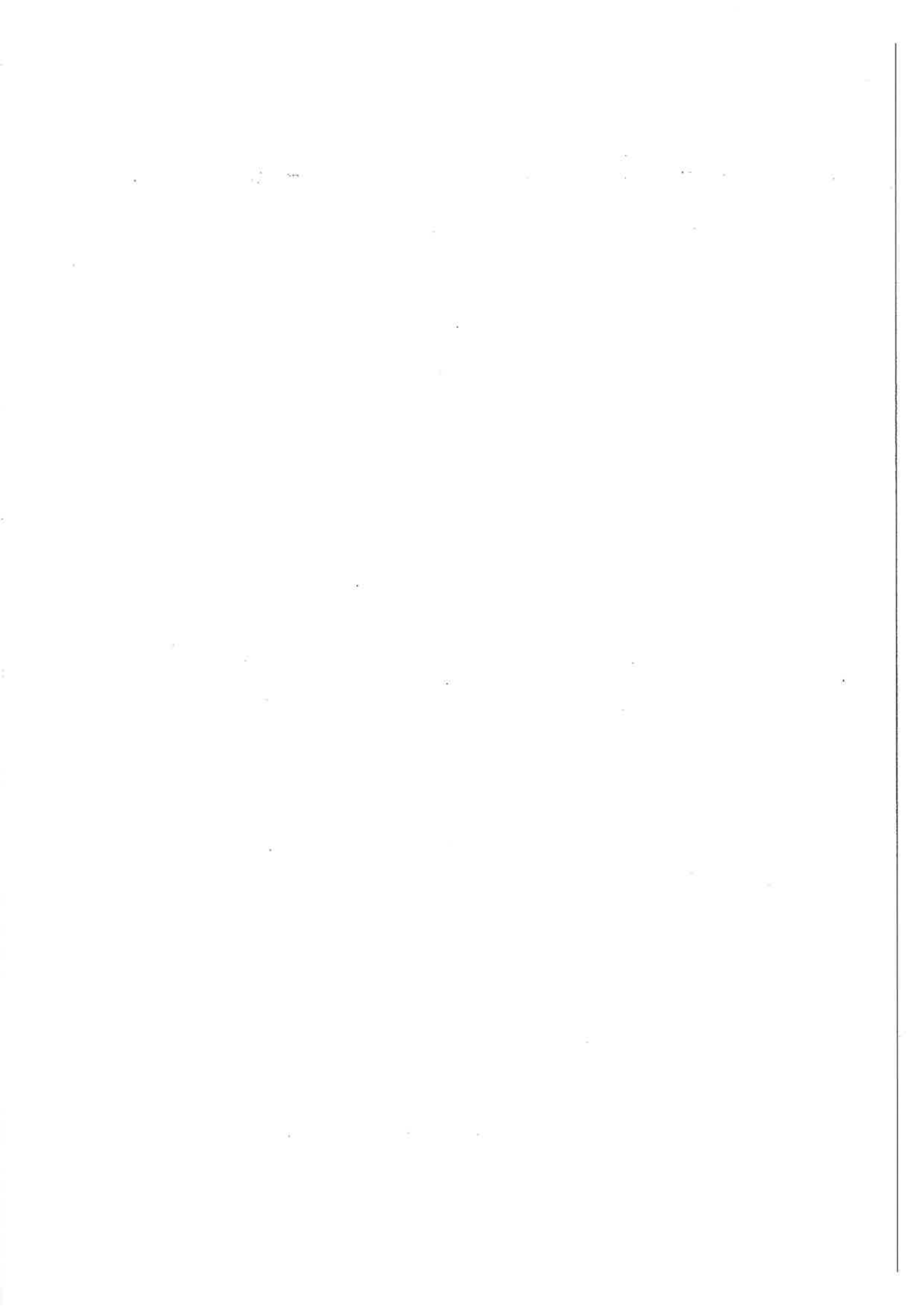
Peter Vaughan PC 2458

Date: **4th September 2015**

Capacity **Chief Constable 4395 Peter Vaughan**

Notes for guidance

1. The grounds for review must be based on one of the licensing objectives
2. Please list any additional information or details, for example dates of problems which are included in the grounds for review, if available.
3. The application form must be signed
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address we shall use to correspond with you about this application



SIMLA TANDOORI RESTAURANT



Pen-y-bont ar Ogwr
Mwy Diogel



Safer Bridgend

www.saferbridgend.org.uk

**APPLICATION FOR A REVIEW OF THE
PREMISES LICENCE**

HEARING 23RD OCTOBER 2015

**HOME OFFICE CHECKS TO ASCERTAIN IF
SOMEONE CAN WORK IN THE UK
AND ADDITIONAL INFORMATION**

HOME OFFICE CHECKS TO ASCERTAIN IF SOMEONE CAN WORK IN THE UK

The following information was freely obtained from: -

- 1) Prevention of illegal working – This is the link to the Home Office employers guidance. The ‘Comprehensive Guidance for Employers on Preventing illegal working’ contains details of all the documents to prove entitlement to work:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/>
- 2) Document verification – This site contains the information on forged & counterfeit documentation:
http://www.cpni.gov.uk/documents/publications/2007/2007044-gpg_document_verification_guidance.pdf?epslanguage=en-gb
- 3) Right to work (SEE BELOW) – This site guides you through the process of establishing whether or not a person has permission to work in the UK:
www.gov.uk/legal-right-to-work-in-the-uk

If employers are unsure of the steps required to avoid employing illegal workers there is also a UKBA help line available: 03000 123 4699

3) RIGHT TO WORK CHECK IF SOMEONE CAN WORK IN THE UK

1. Does the worker have a UK passport?

Yes/No

2. Is the worker:

A British citizen? Yes/No

From Channel Islands, Isle of Man, Republic of Ireland? Yes/No

From EU, EEA or Switzerland? Yes/No

From somewhere else? Yes/No

3. Does the worker have a permit or visa showing their ongoing right to work in the UK? Yes/No

A permit or visa would show one of these:

They're exempt from immigration control

They have indefinite leave to remain

They have no time limit to their stay in the UK

They have a Certificate of Entitlement to Right of Abode (in a current, valid passport)

4. Does the worker have documents entitling them to work in the UK? Yes/No

The worker should have both of these documents to work in the UK:

An official document from a UK government agency (e.g. HM Revenue & Customs, Department for Work and Pensions, or the Social Security Agency in Northern Ireland) showing their National Insurance number

Either an 'immigration status document'

Or

A letter from the Home Office saying that they have a right to permanent residence

5. Does the worker have a visa, biometric permit or residence document?

Yes/No

The worker needs one of these:

***Visa for the relevant type of work**

***Biometric residence card for the right type of work (or a 'Certificate of Application' for a card less than 6 months old)**

***Document issued by the Home Office to a family member of an EU/EEA/Swiss national showing that they can work in the UK**

The worker MAY NOT be currently entitled to work in the UK.

If the worker can't produce any of these documents, they may not be entitled to work in the UK. They might need to be sponsored.

BEFORE YOU CAN SPONSOR AN EMPLOYEE

Before you can apply for a sponsorship licence you need to know which type of licence you need.

There are different categories (or tiers) of sponsorship for employees:

Tier 2 - skilled workers with a job offer

Tier 5 - temporary workers

TIER 2 - Skilled workers with a job offer

Tier 2 sponsorship can be:

*General - for people coming to work in the UK with a skilled job offer which is National Qualifications Framework (NQF) level 6 or above.

*Intra-company transfer - for multinational companies sending their employees to the UK for jobs of NQF level 6 or above

*Sportsperson - for elite sportspeople and coaches that will be based in the UK

*Minister of religion - for people coming to work for a recognised religious organisation (for up to 3 years)

TIER 5 - Temporary workers

Tier 5 sponsorship can be:

- *Creative and sporting - to work as a sports person (up to 12 months), entertainer or artist (up to 24 months)
- *Charity worker - includes both paid and voluntary workers (up to 12 months)
- *Religious worker - for those doing preaching, pastoral and non-pastoral work (24 months)
- *Government authorised exchange - for those coming to the UK through an approved scheme (24 months)
- *International agreement - for those coming to the UK for a job that is covered under
- *international law, e.g. employees of overseas governments

ADDITIONAL INFORMATION

Further enquiries have revealed that between the period which has been detailed within the original review application the UK Borders Agency has in fact executed **5** warrants and arrested **10** employees.