

## LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Thursday, 31 March 2022 at 12.00 pm in the Council Chamber of the Guildhall, Portsmouth

### Present

Councillors Scott Payter-Harris (in the Chair)  
George Madgwick  
Benedict Swann

Also Present:

#### Applicant to the review:

Ms Yasmin Hall, Counsel, for Home Office (Immigration Enforcement)  
David Newcomb, Immigration Officer, HM Immigration

#### Responsible authorities (Police)

APS Rackham  
PC Vincent

#### Premises Licence Holder:

Mr Jon Wallsgrove, solicitor for Mr Albert Choi  
Mr Albert Ion-Chun Choi

#### Officers:

Mr Ben Attrill, Legal Advisor  
Mr Derek Stone, Principal Licensing Officer  
Ms Grace Ennis, Licensing Officer (observing)  
Mrs Karen Martin, Local Democracy Officer (Clerk)

The meeting was convened at 12.00 noon by the Clerk and adjourned to allow the reserve member of the Licensing Sub-Committee to journey to the Guildhall.

The hearing commenced at 12.34pm

### 12. Appointment of Chair

Councillor Scott Payter-Harris was elected as Chair of the Licensing Sub-Committee. He welcomed everyone and outlined the procedure that would be followed. Introductions were made by those present.

### 13. Apologies

Councillor Tom Coles had tendered his apologies. Councillor Benedict Swann was present as his reserve.

#### **14. Declarations of Members' Interests**

No interests were declared. For transparency, Councillor Payter-Harris noted that Councillor Lee Mason, a colleague from his Group, and Mr Steve Hudson, who is known to him, had made representations in this matter. Councillor Payter-Harris informed those present that he had not discussed the matter with Councillor Mason or Mr Hudson. When asked, Councillor Payter-Harris confirmed he had no financial ties to Mr Hudson.

#### **15. Licensing Act 2003 - Review Application - Noble House Restaurant, 43 Osborne Road, Southsea, PO5 3LS**

The Principal Licensing Officer introduced the report and set out the application for the review of the premises licence and the grounds for the review which had been submitted by Home Office Immigration Enforcement. He explained that the application relates to the prevention of crime and disorder licensing objective.

The Principal Licensing Officer informed the Licensing Sub-Committee that in determining the review it must have regard to the promotion of the licensing objectives, the Licensing Act 2003 and other relevant legislation, the adopted Statement of Licensing Policy, current statutory guidance, and judgments. In relation to the statutory guidance, he explained the review process and particularly highlighted the following paragraphs: 11.19, 11.26, 11.27 and 11.28.

For clarity, the Principal Licensing Officer confirmed that there was a typographical error relating to the visits made by the immigration service and that the first visit was made on 23 September 2011 and not 2012. Subsequent visits had been made on 20 June 2012 and 23 October 2021 (page 91 of the agenda pack).

#### Members' questions

In response to questions from members, the Principal Licensing Officer clarified that at the time of the HO Immigration Officers' visit to the premises, on 23 October 2021, Mr Choi was the Premises Licence Holder and not the Designated Premises Supervisor.

There were no questions from the Applicant, Responsible Authorities (Police) or Premises Licence Holder and his representative.

#### **Applicant's case**

Ms Yasmin Hall, Counsel for Home Office (Immigration Enforcement) introduced the circumstances relating to the application for review. She noted that a comprehensive document had been prepared and circulated and that the Principal Licensing Officer had provided a thorough summary to the Licensing Sub-Committee in his introduction.

Ms Hall confirmed that the Home Office was seeking revocation of the premises licence and she invited Immigration Officer David Newcomb to

describe the events of the evening of 23 October 2021, set out in a series of witness statements in the pack circulated with the agenda for the hearing. To assist with this, and with the permission of the Chair, she asked questions and Officer Newcomb provided the following information in response:

- He had led a team of 6 officers and on entry to the restaurant, the first person he had met was Mr Choi, where upon he had tried to show him his warrant card and set out his powers to enter.
- The visit was based on intelligence that workers without a right to work were working at the premises.
- In standard practice two officers were positioned at the back of the premises and on entry, two others went through to the kitchen, and one was positioned by the front door.
- Mr Choi tried to block access to the kitchen, he was enraged and shouting in Mandarin and a colleague who was using a phone interpreter service app (called Big Word), said that he was instructing workers not to engage with the officers.
- There were customers in the restaurant.
- There were three people in the kitchen wearing chef's whites and aprons and initially the officer's attempts to find out who everyone was were unsuccessful as Mr Choi was instructing them not to engage, and they would not speak.
- Officer Newcomb was still trying to work with Mr Choi, and this went on for about 10 minutes.
- Eventually the three workers had been identified and it was established that none had permission to work, and they were arrested.
- Once the arrests had been made Mr Choi changed his attitude and calmed down.
- Officers use their phones to record interviews (using a system called Pronto); this records questions and answers which interviewees can change or amend before digitally signing their statement.
- The interviews of the three workers were conducted using the interpreting service and they signed their statements agreeing that they were a true and accurate record.
- The interview with Mr Choi was in English, he had the opportunity to amend and sign the statement, but he refused to sign it.
- At this stage, the workers were not asked where they lived as it was not part of the investigation; once the interviews were complete the Chief Immigration Officer decided whether to detain the workers or not.
- As two workers were granted temporary release, officers needed an address for them; after approximately one and a half hours it became clear that they lived upstairs (above the restaurant) and they were wearing keys around their necks.
- The officers were having trouble with the mobile phone signal within the restaurant, so Officer Newcomb decided to take the arrested persons back to the office to serve the paperwork.

Ms Hall concluded her statement to the Licensing Sub-Committee by referring members to the documents submitted. She also sought permission to address the Licensing Sub-Committee further if necessary.

### Members' questions

In response to questions from members of the Licensing Sub-Committee, Officer Newcomb provided the following points of clarification:

- The Immigration Enforcement service aims to keep people out of detention if possible and, due to covid, there was no imminent prospect of removal, so the two individuals were not detained.
- When Officer Newcomb had entered the premises, Mr Choi was the first person he saw; there was a table just inside the door and Mr Choi was talking to customers at the table.
- Once officers went past him and into the kitchen, Mr Choi started filming officer's faces and collar numbers; he kept disputing officer's right of entry and made threats.
- Mr Choi wanted Officer Newcomb to talk to his solicitor on the phone, but this offer was refused as the identity of the person on the phone could not be determined.
- Mr Choi went on to say that he had powerful friends; he was attempting to obstruct the officers in their work, and had more officers been available Mr Choi would have been arrested.

The Legal Advisor noted that additional information had been submitted since the publication of the agenda comprising:

- On 30 March 2022, the Premises Licence Holder had submitted additional information including:
  - Representation on behalf of Mr Albert Choi in respect of the application to review the premises licence held in his name for Noble House Restaurant
  - Conditions to be imposed for Noble House Restaurant
  - Judgment in the case of Hall & Woodhouse -v- The Borough and County of the town of Poole
  - Lease for the property known as Noble House, dated 15 September 2021
  - No Action Notice, dated 17 March 2022
- The Principal Licensing Officer had on 31 March 2022, submitted an email from Mr Gareth Williscroft, Data and Sanctions Team for the Home Office dated 31 March 2022 and relating to the Civil Penalty Notice from the visit on 23 October 2021.

Ms Hall informed the Licensing Sub-Committee that all the information she had been provided in relation to the Civil Penalties was at page 91 in the agenda pack, and that she had noted the typo clarification provided by the Principal Licensing Officer in relation to the first visit. She also noted that the documentation provided by the Premises Licence Holder on 30 March 2022, stated that Mr Choi had not been involved in the previous Civil Penalties as the restaurant had been leased to others on each occasion that they had therefore been responsible for the fines.

The Legal Advisor noted that Mr Choi has been the Premises Licence Holder throughout the period covering the Civil Penalties.

Members of the Licensing Sub-Committee asked further questions and Officer Newcomb clarified:

- As he was the officer in charge of the visit, he had not conducted any of the interviews.
- In his interview, Mr Choi had provided the company VAT number not the companies house number for Noble House.

Mr Wallsgrove clarified that the VAT number was readily available on till receipts.

The Chair enquired if all parties had read the supplementary papers. The Legal Advisor noted that the information dated 31 March 2022 had been circulated as the hearing had started. The Chair suggested a 30-minute adjournment.

Mr Wallsgrove commented that the Home Office had had the papers submitted by the Premises Licence Holder for two days, that their engagement throughout has been appalling and he asked that the hearing proceed.

The Chair noted that all parties must have had time to read all the papers and the Licensing Sub-Committee adjourned at 13.11pm. The hearing resumed at 13.32pm

Members of the Licensing Sub-Committee resumed their questions, and Officer Newcomb explained that when asked about his role in the business, Mr Choi said he was a director. However, when the Civil Penalty Notice had been issued, Mr Choi stated that he had ceased to be a director of the company two days before the visit.

Mr Wallsgrove commented that Mr Choi did not receive the Civil Penalty Notice and that he had been asking the Civil Penalties team for information for 5 weeks and the information received at the hearing was the first time they had seen any information.

The Chair noted that it was not the appropriate time for the Premises Licence Holder to make statements to the Licensing Sub-Committee and members continued to ask questions.

Officer Newcomb provided the following information in response to members' questions:

- In relation to the visit on 23 October 2021, the Civil Penalty Notice had been issued to Thomas9000 Limited on 17 March 2022
- Although Mr Choi had informed officers that he was a director at the time of the visit, it was not possible to say if he had been acting as a director.
- Companies House had received notice that Mr Choi was ceasing to be a person with significant control in A Choi Limited on 23 November 2021 and this notice had been backdated to 20 October 2021.

### Questions from the Responsible Authorities (Police)

In response to questions from APS Rackham and PC Vincent, Officer Newcomb provided the following points of clarification:

- He had been an immigration officer for 10 years, had conducted thousands of visits and the visit on 23 October was conducted lawfully and within the powers vested in officers.
- The visit aimed to establish workers' right to work.
- Mr Choi said he was in charge, had told an officer that he was a director of the company and employed those workers.
- Officer Newcomb believed the workers had no right to work in England.
- The Pronto system which records the statements remembers standard questions, so officers do not have to type these in full each time; officers type in the answers and in this case they were also using the interpreting app to translate the questions and answers.
- Mr Choi chose not to sign the statement resulting from his interview.

### Questions by Premises Licence Holder

Mr Wallsgrove asked questions on behalf of the Premises Licence Holder and Officer Newcomb provided the following points of clarification:

- He did not know who within the Interventions Directorate at Croydon had written the review application report; Gareth Williscroft is the head officer and would have checked it.
- The team had been tasked to make the visit to Noble House on 23 October 2021 under s179 of the Licensing Act 2003.
- Officers do not keep paper notebooks; all information is recorded on their phones using Pronto.
- None of the workers were taken to a detention centre; they were taken from the restaurant to the office in Portsmouth as officers were struggling with the phone signal, the process was taking a lot of time and it seemed prudent to seek better telephone reception.
- The workers were cautioned at the time of arrest; this was an administrative caution not a criminal caution; as a result, there is no offer of a solicitor and no obligation for them to answer questions.

Mr Wallsgrove suggested that officers had no right of visit under s179 of the Licensing Act 2003 as the matters under investigation were criminal activities and the workers did not receive the appropriate caution or access to legal advice. Officer Newcomb informed the Licensing Sub-Committee that the visit was sanctioned and confirmed that where the outcome was a Civil Penalty Notice, officers do not give a criminal caution and that officers had acted in accordance with training.

Ms Hall enquired about the lease for the premises and Mr Wallsgrove confirmed that Mr Jian Li had signed the lease on 15 September 2021, effective 1 September 2021 and that he (Mr Wallsgrove) was not aware of his right to work status although it was confirmed that Mr Li was the operator of the business

Ms Hall was not able to say why there had been a lack of engagement from the Home Office or why no information had been forthcoming in answer to questions asked by Mr Choi over the past 5 weeks. Ms Hall confirmed that the Home Office had received the conditions suggested by Mr Wallsgrove and was still seeking revocation of the premises licence.

### **Representations by the Responsible Authorities (Police)**

PC Vincent raised the following points in his representations to support the application for a review of the premises licence for Noble House on behalf of the Chief Officer of Police for Hampshire Constabulary:

- The reason for the representations was to highlight concerns about the working practices at the premises.
- The Home Office Immigration Team had provided evidence which showed the following: DPS and Premises Licence Holder were employing three kitchen staff who did not have a right to work; the same three staff were living above premises in a flat controlled by the Premises Licence Holder; the reaction to the visit to the premises by the premises licence holder; the apparent threats made by Mr Choi to Officer Newcomb in the course of his duties.
- That arrests were made in relation to illegal workers at the premises following two previous immigration visits made in 2011 and 2012, although there seemed to be confusion about the dates.
- Immigration offences have been committed.
- The evidence from immigration officers shows that the Premises Licence Holder had an element of control over the workers who were working illegally at the premises and that they, and Mr Choi, were present at the time of this incident.
- The evidence is that the Premises Licence Holder tried to influence those workers and prevent them talking to immigration officers.
- The interviews also highlight serious concerns about the potential for modern slavery and human trafficking.
- The Police have serious concerns about the operation of the premises and their ability to promote the Licensing Objectives and, therefore, revocation of the premises licence is the only suitable way of dealing with this matter.

Acting Sergeant Rackham included the following in his statement to the Sub-Committee:

- There seems to be conjecture about whether it was Mr Choi or Mr Li in charge of the premises at the time.
- This is a licenced premises, Mr Choi holds the premises licence and is therefore responsible for ensuring the promotion of the Licensing Objectives.
- Regardless of who is at fault, the task before the Licensing Sub-Committee is to understand if the premises has promoted the Licensing Objectives or has failed to promote the Licensing Objectives.
- It is clear from the evidence supplied by the immigration service that illegal workers were working at the premises and that raises concerns around the potential for modern slavery and human trafficking.
- In their accounts to immigration officers, the workers said they were not being paid a proper wage.

- Regardless of who has employed them, the premises was using illegal workers and that significantly undermines the Licensing Objectives.
- Whoever is in charge, the law states that they must perform checks that workers have the right to work in the UK and there is nothing that the Sub-Committee can impose on the licence that will ensure that the Licensing Objectives are promoted.
- The only option is to revoke the premises licence.

There were no questions from members of the Licensing Sub-Committee, the Applicant or the Premises Licence Holder or his representative.

### **Premises Licence Holder's case**

Mr Wallsgrove included the following in his remarks to the Licensing Sub-Committee:

- Before turning to merits of the representations presented, it is important to draw to the Sub-Committee's attention the lack of engagement that there has been with the immigration enforcement team and how this has resulted in some difficulty in getting a fair hearing for Mr Choi.
- Whatever the decision, the Licensing Sub-Committee should send a message back to the Home Office to engage in the process in a proper manner.
- When the review notice was served, Mr Wallsgrove immediately emailed the email address on the application asking for disclosure of information as some of it was clearly lacking, for example, summaries of interviews rather than complete interviews. There was no response.
- On 2 March, he sent a second email asking for a response to the first email. A reply was received saying that the wrong email address had been used even though it was the one given for correspondence on the application. The officer in the case was away due to a bereavement and the email would be passed on.
- There was no response within the promised timeframe, so a further follow-up was made on 16 March. No response.
- An email was finally received on 23 March to say a lawyer had been appointed.
- That lawyer emailed following day to say they would be back in the office on 28 March and Mr Wallsgrove made an appointment to telephone at 11am on 28 March. There was no answer.
- On 29 March, Mr Wallsgrove spoke to the lawyer and the only information forthcoming was that Counsel had not yet been appointed.
- Mr Wallsgrove had not therefore been able to talk to anyone about the legality of the lease, the proposed conditions, the previous civil penalty notices issues, and this was an appalling state of affairs.
- S102 guidance makes it clear that the underpinning ethos of the Licensing Act is for the parties to work together and for there to be engagement.
- Counsel here today had not seen the papers sent to the home office 2 days ago until this morning; they had been circulated yesterday as he had wanted to engage with the Home Office first and this information



would have been made available to the Sub-Committee earlier if the Home Office had engaged.

- The Licensing team at Portsmouth had advised the Home Office that Mr Choi did not need to make written representations, and he could make them verbally. This is true but they did not make these comments to Mr Choi's solicitor.
- Mr Choi's account of what had happened is set out in his representations.
- He did not dispute that two people for which civil penalties have been issued against Mr Li's company did not have the right to work.
- The question for determination was who the operator was at the time. It was Mr Li and he employed the workers.
- Mr Choi disputes some of the information the officers have given, and he refutes that he was coercive on the night of the visit.
- None of those interviewed said they had felt coerced in their witness statements; we say they were scared, he was trying to calm them down and that Mr Choi was agitated as two officers went straight past him into the kitchen.
- We also refute any suggestions that Mr Choi made inappropriate physical contact with any of the officers.
- His talking to the staff was simply to calm them down; in fact, he provided their names to officers.
- It also does not add up that there were not enough officers to arrest him for obstruction; that seems convenient and is not reflected in what is in the statements.
- Part of the statements are missing, they have been requested but not supplied; Section 179 of the Licensing Act requires officers to include everything in witness statements.
- This case rests on the fact that Mr Li was the operator of this restaurant at the time not Mr Choi.
- Mr Choi is in the same position as many other businesses nationwide where the freeholder or principal lease holder is listed as Premises Licence Holder.
- The Hall and Woodhouse case has been provided as an example that this is standard business practice and that the Premises Licence Holder is not necessarily the person carrying out licensable activities at the premises.
- The lease came into effect 1 September and is dated 15 September.
- The change of company name is standard business practice; Mr Choi has done it in the past and this what happened in this case.
- The 5-year lease is the key document and the change of director to Mr Li pre-dates the visit in any event.
- Mr Choi was not responsible for the employment of the workers and on this basis his premises licence should not be revoked.
- Mr Choi has now been advised that it was not good business practice for him to hold the premises licence and have someone else operate the business.
- Using a shadow premises licence has been proposed in the conditions along with the removal of the DPS as it is accepted that the DPS should have had knowledge about the employment of staff.

- Mr Li left owing Mr Choi money and he is now controlling the business once again.
- It is suggested that proper HR policies are put in place to ensure that workers are legally here; it is agreed that it is a statutory obligation but such a policy goes further particularly in relation to record keeping.
- These conditions would be a just and proportionate response and allow Mr Choi to operate in future; he has run the premises himself from time to time and has had other operators in the business at various times over the past 30 years.
- The previous civil penalties were nothing to do with Mr Choi and were the result of the activities of other people operating the premises.
- There is no evidence of any other aspect of the operation of the business failing to promote the Licensing Objectives; it has been in business for 30 years and 10 people have written in support, effectively providing Mr Choi with a character reference.
- The extra conditions suggested will ensure that the confusion will never happen again and will put the responsibility on the third-party operator of the premises.
- While Mr Choi is in charge, he will have HR policies in place, though there is some work to do to complete them.
- CCTV has been installed since the visit and the Sub-Committee could add this as an additional condition if it was felt to be appropriate.

#### Members' questions

In response to questions from members of the Licensing Sub-Committee, Mr Wallsgrove provided the following points of clarification:

- Mr Choi has been a tenant of the premises on a long lease for the past 30 years; he owned the freehold at one point in the past.
- Mr Choi never said that he had powerful friends, he did say he had an important customer.
- Mr Choi did not know that the two workers were not able to work.
- The effective date on the lease is 1 September and it was not possible to produce evidence such as a bank statement relating to payments from 1 September.

In response to a question from the Chair about the backdated date on the lease, Counsel for the Home Office informed the Licensing Sub-Committee that companies house records showed the cessation of Mr Choi as director was received for filing on 23 November 2021 and that the cessation was backdated to 20 October which was three days before the visit.

Mr Wallsgrove provided the following points of clarification in answer to other questions:

- Setting up a company that other businesses could change the name of, or change the name of a director when they took on the business is a legitimate business tool.
- Mr Choi had been involved in the Noble House brand for many years and as part of the agreement with Mr Li, he and his family agreed to work there as a gesture of goodwill and enable the success of the business so that he could pay Mr Choi the rent owed.

- He was generally only there at weekends to keep the brand going for a transition period; he was planning to step down as soon as possible.
- Mr Choi and his wife are working there again now in the short term only.
- Shadow licencing is not a well-known practice. Mr Choi has conducted the business as Premises Licence Holder over the past 30 years.
- The last two times civil penalties were issued, no action had been taken against Mr Choi and he did not see a reason to change his established business model as his licence stayed intact.
- Mr Choi used to work for a national corporate brand, now known as Mitchells and Butlers, but at that time the licensing regime was based on Justice's Licences and had to be held by individuals.
- Mr Choi was employed by Mr Li; there was payroll but it was not possible to produce it.
- Mr Li owes Mr Choi £6000.
- It was not possible to produce examples of leases in operation between 2012-21 as it was not expected that they would be needed.

The Chair noted that the decision would be made on the evidence before the Sub-Committee. Mr Wallsgrove agreed adding that there have been three incidents in the 17 years since the new Licensing Act 2005 came into effect and that at all other times the premises has been run well.

Mr Wallsgrove provided the following points of clarification in answer to other questions:

- Mr Choi had no connection to the businesses operating the restaurant in 2011 and 2012 when the civil penalties were issued.

Following reference to a director of the companies operating the business when the civil penalties were issued in 2011 and 2012, the Legal Advisor expressed concern about members of the Sub-Committee conducting their own research and introducing evidence to the proceedings. He advised that the Sub-Committee should not take into consideration any such research or information.

Mr Wallsgrove commented that Mr Choi had no knowledge of those civil penalties or the conduct of those investigations at that time and because he was leasing the premises had no operational control at those times.

Mr Wallsgrove provided the following points of clarification in answer to other questions:

- On the night of the visit, Mr Choi did not understand that he might receive a civil penalty, be subject of a criminal investigation or that the premises licence might be revoked.
- Mr Li did not step forward as the operator as he was also the chef and did not see the immigration officers come in.
- Mr Li was effectively the employer and so could not be subject of a civil penalty and be fined for employing himself; Mr Li was a director of the company.

- It was not Mr Choi's responsibility to ensure that new workers coming into the business were working legally.
- Mr Choi wanted to maintain the brand so that Mr Li could make enough money to pay the rent.
- The suggested conditions would this avoid happening again.
- Mr Choi is the Premises Licence Holder.

Mr Wallsgrove confirmed that the hearing had been conducted fairly by the Licensing Sub-Committee. However, because the information he had requested had not been forthcoming from the Home Office it had not been possible for Mr Choi to have a fair hearing as it may have changed the way the case had been put. Mr Choi had not asked for an adjournment in the absence of the information as he had found the process very stressful and wanted a conclusion to it today. Whatever decision the Licensing Sub-Committee made, a comment needed to go back to immigration enforcement in Portsmouth about their lack of engagement.

Mr Wallsgrove provided the following points of clarification in answer to other questions:

- Mr Li was interviewed and had the opportunity at the time to say that he was a director in interviews.
- The two other workers had been in Portsmouth for a short period of time.
- The request for accommodation for the two workers had come to Mr Choi from the Chinese Society and it was not for him to question their status to work.

Officer Newcomb further clarified that he was unable to provide details about how long they had been in the country, but they had been illegally present in the UK for a considerable period.

The Chair invited Mr Choi, or Mr Wallsgrove on his behalf, to explain in his own words what had happened on the night of the visit. Mr Wallsgrove explained:

- Several people in dark uniforms, maybe 3-4, had come into the restaurant and that everyone present had been shocked.
- One officer made his way past Mr Choi towards the kitchen before he knew what was going on and Mr Choi asked where the officer was going and what was going on.
- One officer tried to explain what was going on, but the other officer had already gone in to the kitchen.
- The three people in the kitchen were scared by the people in uniform and Mr Choi spoke to them in his own language to reassure them. He was not aware of the online interpreter on the phone, he thought that was used later.
- Mr Choi absolutely refutes that he was coercive and was taken aback when he heard that he had been thought to be coercive and shouting.
- Mr Choi wrote the names of the individuals down on piece of paper for the officers.

- He may have brushed an officer's arm but not threateningly and he had not tried to stop anyone coming into the premises.
- The restaurant only has 8 tables and is very small and cramped. Mr Choi would have been near the workers wherever he was as the restaurant is so small
- The officers exaggerated what had happened and provided their opinions about whether he was coercive and not all the information provided by the officers was consistent with each other - they got the times wrong and so on.
- Mr Lee was the person responsible, not Mr Choi.

Mr Choi confirmed that this account was accurate.

The Legal Advisor suggested that it might be useful for him to address the Licensing Sub-Committee on matters raised during the hearing at this stage to provide an opportunity for others to comment if needed. The Chair agreed.

- The first point related to the assertion made regarding particular PACE failings in the interviews that took place. These are not criminal proceedings and the Licensing Sub-Committee hearing would not determine guilt; the Sub-Committee should take that evidence into account and place weight on it as it sees fit. The Sub-Committee had heard that the interviews were contemporaneous and the interviewees were given the opportunity to agree or rectify their statements.
- The second point was the assertion that the relevant determination for the Licensing Sub-Committee was whether Mr Choi employed the three persons asserted to be illegal workers. The advice to the Sub-Committee endorses the view of the Police that it is a wider consideration (see paragraph 11.28 of the guidance) which relates to the use of premises rather than the strict determination of whether Mr Choi did or did not employ the three workers concerned.
- The third point was that even if Mr Choi was not the Premises Licence Holder, (which is not disputed, and it is accepted that he was for all three events referenced) it is open to the Licensing Sub-Committee to consider whether Mr Choi was a controlling mind behind the premises and the business. The case law behind this is *Retrobars Wales Limited vs Bridgend Borough Council* where a repeated change of a DPS was considered in that case, with the point being established that if there is a controlling mind behind the business the premises licence can still be accountable even if that person is not the Premises Licence Holder. In this case Mr Choi was the Premises Licence Holder.

The Chair noted that it was fair and transparent to provide this advice in open session. He then asked Mr Wallsgrove to comment. Mr Wallsgrove requested a copy of the *Retrobars* case, adding although he accepted the precedent and endorsed the advice, the facts of the case would have bearing on the decision made by the Judge.

The Chair proposed an adjournment before summing up to enable Mr Wallsgrove to read the case. Mr Wallsgrove agreed.

### Questions by the Applicant

There were no questions from the Applicant.

### Questions by the Responsible Authorities (Police)

PC Vincent, referring to the Hall & Woodhouse case cited by the Applicant, noted that paragraph 20 of that case states that if breaches do occur the Premises License Holder is responsible unless, having put in an adequate system, he is able to avail the defence of due diligence under section 139. He asked what system or measures had been put in place by the Premises Licence Holder, including staff training records.

Mr Wallsgrove agreed the point and added that Mr Choi could not interfere in another person's business and that the business operator would have to comply with the conditions on the premises licence. It was for the operator to put in place their own procedures to ensure people were lawfully employed and was why the proposed condition requiring any third party managing the business to apply for their own premises licence.

The Licensing Sub-Committee adjourned at 3.09pm and resumed at 3.21pm. On return, Mr Wallsgrove confirmed that he was happy that he had been provided with the information requested (*Retrobars Wales Limited v Bridgend County Borough Council*).

### **Summing up by the Applicant**

Ms Hall noted that it was clear that members of the Licensing Sub-Committee had read the papers for the hearing very carefully and had taken on board everything said. She added that the position of the Home Office was that on the balance of probability and in all the circumstances, while revocation was not only course of action open to the Sub-Committee, it was the only course which would change the situation. She had taken a full note of Mr Wallsgrove's comments about the lack of response to his enquiries and this will be fed back to the Home Office. The case against Mr Choi had been presented to him and he had all the paperwork before the Sub-Committee. The interviews were not full transcripts and the Sub-Committee had heard from the officer that the summaries include all the salient points.

### **Summing up by the Responsible Authorities (Police)**

PC Vincent stated that there had been conjecture who was in charge of premises and that paragraph 11.26 of the guidance states that if there has been criminal activity at the premises revocation should be seriously considered. The employment of a person with no right to work should therefore lead to revocation of the premises licence. There was criminality at the premises on three separate occasions and arrests had made in 2011, 2012 and 2022 where illegal workers had been found working at the premises.

### **Summing up by the Premises Licence Holder**

Mr Wallsgrove summing up for the Premises Licence Holder stated:

- Regarding the last point made by the police officer relating to criminality, the Licensing Sub-Committee should look forward and consider if it would happen again if the suggested conditions were imposed.
- On the balance of probabilities, the events were not under Mr Choi's control and his was not a "controlling mind" in the operation of the business.
- Referring to the facts of the Rertrobars case, the director was the DPS when she had been replaced by a young person and it was clear she would continue to run the business behind the scenes. This was not the case here.
- Crime had taken place at the premises and the Licensing Sub-Committee would want to know would not happen again either with Mr Choi or someone else running the business, hence the suggested conditions.
- Mr Choi was not engaged in criminal activity; the suggested conditions would ensure no future issues and help secure the future for this restaurant.
- The imposition of the suggested conditions was a just, reasonable and proportionate way forward.

All parties confirmed that they had said everything they wished to.

The Licensing Sub-Committee adjourned to consider its decision at 3.33pm. The hearing resumed at 4.36pm.

The Chair announced the decision set out below and in doing so informed those present that all parties shall receive written confirmation of the decision and reasons.

### **Decision**

The Licensing Sub-Committee has considered very carefully the application for review of a premises licence at the Noble House Restaurant. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Licensing Sub-Committee considered the relevant representations, both written and given orally at the hearing, by all parties. Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.

The Licensing Sub-Committee noted that the application was made by the Home Office citing the prevention of crime and disorder as the relevant licensing objective. The issues raised relate to the repeated use of the premises for the employment of illegal workers. Representations in support of the Premises Licence Holder had been received from residents, businesses and councillors. The police had submitted a representation supporting the Home Office request for revocation of the premises licence, on the basis of the prevention of crime and disorder. The solicitor for the Premises Licence Holder had submitted written representations in advance and these were

expanded upon at the hearing. There was also an exchange of documents relating to the previous civil penalty notices and company documentation.

After having heard all of the above evidence and considering all of the options set out within the legislation (ranging from taking no action to revocation of the premises licence) the Licensing Sub-Committee determined that the premises licence should be revoked.

### Reasons

Amongst arguments raised for the Premises Licence Holder the following were stated:

Mr Choi did not employ the 3 persons detained on 23 October 2021.

- Mr Choi has not been issued a civil penalty in this latest instance or previously (also no company over which he has control has been issued a civil penalty)
- Mr Choi had no knowledge of the employment of illegal workers on any of the dates concerned
- Mr Choi had leased the premises to a third party on each of the three occasions
- Mr Choi and his business has suffered as a result of the proceedings
- Mr Choi denied that behaviour was obstructive
- Mr Choi had arranged accommodation but had no knowledge of the employment of illegal workers
- CCTV, training and conditions would prevent third parties from employing illegal workers in future

The Licensing Sub-Committee considered carefully all the points raised for the Premises Licence Holder. It is not accepted there was the degree of separation from the premises as set out in the case of *Hall v Woodhouse* (where a company owned approximately 250 premises and let two-thirds of those premises by tenancy agreement - thereby having no day-to-day or direct control of those premises). The case cited concerned criminal liability for an offence under the Licensing Act 2003. The determination that the actions of a third party cannot necessarily make the licence holder liable to criminal prosecution is not applicable to consideration of whether a licence holder is ultimately responsible for their licensed premises for the purposes of review. The circumstances of this review is not a position where, for example, a shadow licence was in force.

Any other interpretation would go against the spirit of the Act and the statutory guidance which states:

"10.28 ... However, the designated premises supervisor and the Premises Licence Holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives"....



"10.35 ... Similarly, the Premises Licence Holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises".

In any event, if there are repeated breaches of the Licensing Act 2003 or offences linked to premises and the Premises Licence Holder fails to act to address them then, ultimately, the Premises Licence Holder must always be liable to sanction, no matter how far removed from the day-to-day operation.

In this case it is incredulous to suggest that Mr Choi knew nothing of the employment of those he had arranged accommodation for when they were clearly working in his presence at the premises at the time of the inspection.

The Licensing Sub-Committee noted that the workers and Mr Choi were not cautioned before being interviewed as might be expected for a criminal investigation. However, that failing in respect of a criminal investigation is not relevant to admissibility of the evidence before the Licensing Sub-Committee. Nor does it significantly diminish the weight the Licensing Sub-Committee attaches to that evidence which was contemporaneous - with Mr Choi stating at the time that in relation to the restaurant he was the director of the company and that he had undertaken checks - requesting copies of papers and passports, expressing knowledge of pay, working hours and duties and in conclusion stating that he employs them as kitchen workers. Notwithstanding the above the Licensing Sub-Committee understands the difference between an interview under caution and less formal questioning.

It is not accepted that the prevention of crime objective is not engaged in this case.

The statutory guidance states:

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises.

It is advanced, for the Premises Licence Holder, that it would be wrong to conclude that a criminal offence had taken place if that conclusion relied upon evidence that might be excluded at criminal trial. Even if that were the case i.e. that the evidence would necessarily be excluded, the argument is contrary to principles established in licensing law that offences need not be proven or indeed proceedings need not be commenced for behaviour to be taken into consideration - see for example the case of *Leeds City Council v Hussain* (relating to taxi drivers) as well as the case referenced in the review application pack (*East Lindsey District Council v Hanif*).

The point misses the fact that the licensing objective relates to the *prevention* of crime and disorder and therefore must have a wider interpretation to include the consideration of behaviours that might fall short of conviction or even the commencement of criminal proceedings.

On the balance of the evidence presented, the Licensing Sub-Committee was satisfied that Mr Choi was obstructive at the time of the latest inspection and was clearly aware of the employment of illegal workers at the premises. The accounts of those present at the time make it clear that he remained in a

position of control in relation to the business - instructing them not to engage with officers attending.

The representation for the Premises Licence Holder asserts that the Licensing Sub-Committee must establish on the balance of probabilities "whether Mr Choi employed the 3 persons alleged to be illegal workers". The Licensing Sub-Committee has considered this point and would state that in order for the prevention of crime and disorder objective to be engaged, sufficient to warrant action to uphold its aims, is a far wider discretion. This is confirmed by the guidance at paragraph 11.28 (referenced by the legal adviser during the hearing) which states that where the authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation shall follow. Clearly it is the use of the premises (not necessarily a strict determination of the licence holder's actions) that is relevant. In the circumstances of this case it is clear that Mr Choi was the Premises Licence Holder for the premises on two previous occasions when illegal workers have been found working at the premises and arrests were made. On the latest occasion it is absolutely clear that not only was he the Premises Licence Holder but he was also on the premises, was aware of their presence of and was exerting control over the illegal workers. The Licensing Sub-Committee is not convinced or persuaded that the lease of the premises or previous alleged leases were bona fide arms-length transactions and are satisfied that he remained a controlling force. That a premises can be affected by someone other than the person nominated for a controlling position and that action can be taken in those circumstances is established by the case of *Retrobars Wales Limited v Bridgend County Borough Council*. In any event, in this case, Mr Choi (and he cannot escape the fact) is the Premises Licence Holder and was for the entirety of the relevant period.

It is clear that there is considerable support for Mr Choi and that he has considerable experience in the licensed trade, free of conviction. However, the statutory guidance as referenced in the Committee Report is clear that this type of criminal activity should be treated particularly seriously (paragraph 11.27) and the authority has a duty to take steps to prevent illegal working in the interests of the wider community and not those of the individual licence holder (paragraph 11.26). Further, that revocation should be seriously considered - even in the first instance (paragraph 11.28).

The police have expressed support for revocation of the licence and in accordance with paragraph 9.12 of the statutory guidance the licensing authority makes it clear that they should be the main source of advice on matters relating to the prevention of crime and disorder objective. The police also raise concerns regarding human trafficking and modern slavery at the premises. In their view no conditions could be imposed to address the impact upon the relevant licensing objective.

There is a right of appeal for all parties to the Magistrates' Court within 21 days of formal notification of the decision. The decision has no effect until the expiry of the appeal period or, if lodged, the determination of any appeal.

The hearing concluded at 4.45pm.

.....  
Councillor Scott Payter-Harris  
Chair of the Licensing Sub-Committee

The meeting concluded at 4.45 pm.

.....  
Chair