

Representations on behalf of Mr Albert Choi in respect of the application to review the premises licence held in his name for Noble House Restaurant.

1. The burden of proof in this review lies with the Home Office Immigration Enforcement Department. The standard of proof is “on the balance of probabilities.” The question to be answered in my respectful submission is whether Mr Choi employed the 3 persons alleged to be illegal workers.
2. There are no other grounds on which the premises licence is being reviewed nor other concerns raised about the operation of the restaurant. This is the first occasion on which any concerns have been raised regarding the premises licence since it was issued by Portsmouth City Council in 2005 and before that when it had a justice’s licence.

Background:

3. Mr Choi is a respected businessman in Portsmouth. He is a personal licence holder and has owned the premises for nearly 3 decades. He also held a premises licence for Chez Choi which was opposite Noble House and did so for approximately 15 years. He was also the licensee at a Chinese Restaurant in Hayling Island in the early 2000’s. Before owning his own restaurants Mr Choi work in the hospitality industry for a National Pub Company as a manager in Cardiff, Portsmouth, Basingstoke and Christchurch. He has worked in the licensed trade for over 40 years. He has never had his personal licence or premises licences reviewed until this application.
4. He is a man of good character and has no previous convictions.
5. His is the Chair of the Portsmouth Chinese Society and has been for approximately 12 years. He works closely with Portsmouth City Council on a number of projects from the economic development between China and Portsmouth to Covid vaccinations. He is highly regarded among the Chinese Community and business professionals in Portsmouth. He is a man of integrity and honesty, and this is highlighted by the numerous letters of support for him, many of which refer to his character.

The events leading to this review:

6. Mr Choi did not employ the 3 persons detained on the 23rd of October 2021. There is insufficient evidence to prove it was more likely than not that he did employ them whether as an individual or through a company over which he was in control.
7. He was not issued with a civil penalty as asserted in the report (page 19 of the Agenda). He has received a letter that no action is being taken (attached). No company for which he has control has been issued with Civil Penalty.
8. The two previous Civil Penalties issued for 2011 and 2012 were not against Mr Choi nor any company over which he had control.
9. Mr Choi had no knowledge of the employment of illegal workers in 2011, 2012 nor 2021. There is no evidence before the Committee which proves to the required standard that he did have such knowledge.
10. Mr Choi had leased the premises to Juan Li on the 1st of September 2021. Juan Li was operating his business from Noble House and had employed the 2 other persons (copy of lease attached). Mr Choi was employed by Mr Li to work in the premises on very rare occasions as Mr Li was the Chef and needed front of house experience. Usually Mrs Choi

would have been working for Mr Li but on the occasion of the 23rd of October 2021 Mrs Choi was on holiday.

11. On the two previous occasions in 2011 and 2012 Mr Choi had leased the premises to others. He was not spoken to by anyone regarding those two occasions.
12. Throughout his ownership of Noble House, he has leased the premises to other businesses, but he has also operated the restaurant himself at times, as he does currently following the disappearance of Juan Li after his arrest.
13. Since the review has been issued, he has suffered considerable abuse from unknown members of the premises, including: nuisance phone calls, rubbish being deposited outside the premises, eggs being thrown at the windows and a complaint regarding noise nuisance made to the Council (which complained about noise when the premises were in fact closed). The restaurant has suffered financially, and his reputation has been tarnished, particularly given it the Portsmouth News reported the facts contained in the review application which have yet to be proved and which we know to be entirely false – for example the issue of a Civil Penalty and the link to Mr Choi of the previous cases.
14. On the evening in question the sudden and dramatic appearance of several uniformed officers caused alarm for both staff and customers. Mr Choi was in the front of the restaurant and went to ask why such action was being taken. The first officers into the premises were in Uniform however, it was clear their intent was to attempt to push past Mr Choi rather than explain why they were there. It was the third officer through the door who explained why they were there and provided the relevant notice to Mr Choi.
15. It is reasonable for Mr Choi to have attempted to establish what was happening. He refutes the statement that he “grabbed” officers.
16. Mr Choi did speak to the 3 persons in Chinese. This was to reassure them and to try and calm them down as the officers were intimidating and each of them was visibly scared. The allegation that he was coercive is emphatically refuted. At no time was he advised not to speak to the 3 persons in Chinese.
17. Mr Choi cooperated with the officers once he had been properly informed of the reason why they were in the premises. He provided the names of the 3 persons for the officers without being prompted. He did try and contact a solicitor for legal advice but given it was a Saturday evening his solicitor was unable to take the call. It is perfectly reasonable to seek legal advice in these circumstances and Mr Choi did not threaten legal action against the officers.
18. He did not say he “had powerful friends” on the Council. The officers have clearly misunderstood what he was saying. He said he had a very important customer to contact who had ordered a takeaway and he needed to speak to them. This was Sir Jonathan Bond who has confirmed in his representation that his order was not fulfilled. Making such a claim that he had “powerful friends” would be totally out of character for Mr Choi, which is supported by the character references provided in the numerous representations.
19. Mr Li was resident in the flat above the property. This was part of the agreement with him to lease the premises. Mr Choi was approached as the Chair of the Chinese Society to provide accommodation for the other two persons who had arrived in the area with nowhere to stay. The Chinese Society owns another property in Portsmouth where members of the Chinese community arriving in Portsmouth can temporarily stay for free but this accommodation was not available and so as a gesture goodwill Mr Choi arranged with Mr Li for them to stay in the flat above the restaurant. Mr Choi can only assume that Mr Li then asked them to work in the restaurant. He was not engaged in any discussion with either about working at the premises. He was aware of course they were working on the evening, as was he, but he was not their employer.

20. The Police have made a representation but that it is argued is only on the basis of their reading of the Home Office review papers. They have had no previous engagement with Mr Choi and have never once raised any concerns about how the restaurant has been operated.

Law:

21. The case of Hall & Woodhouse -v- The Borough and County of the town of Poole is authority for the proposition that the acts of third parties cannot be imputed to the premises licence holder. Thus, the employment by Mr Li, or his company, of illegal workers should not be imputed to Mr Choi.
22. The crime and disorder objective is therefore not engaged in this review.

Admissibility and weight of evidence:

23. The Immigration Officers were investigating criminal offences. This is clear from their statements that they entered the premises under the authority of section 179 Licensing Act 2003:

S179(1) "Where a constable or an authorised person has reason to believe that any premises are being, or are about to be, used for a licensable activity, he may enter the premises with a view to seeing whether the activity is being, or is to be, carried on under and in accordance with an authorisation.

S179(1A) "Where an immigration officer has reason to believe that any premises are being used for a licensable activity within section 1(1)(a) or (d), the officer may enter the premises with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity."

Accordingly, it is asserted the officers should have followed the guidance issued by the Home Office on Enforcement visits and Interviewing Suspects. None of the interviews with the 3 persons detained nor that with Mr Choi contained an appropriate "caution" nor were any of them offered access to legal advice.

In criminal proceedings the Interviews would, it is asserted, be ruled inadmissible under section 78 of the Police and Criminal Evidence Act for failing to include the relevant caution and offer of legal advice:

In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

It is accepted that there are no "rules" on the admissibility of evidence in a licensing hearing, however, the Committee are asked to be cognisant of the fact that the Home Office are seeking revocation on the basis of the crime and disorder objective being engaged because the "licence holder has...facilitated a criminal offence taking place." It is contended it would be wrong to conclude a criminal offence took place, even on the lower threshold of "on the balance of probabilities" when seeking to rely on evidence which would almost certainly be excluded in a criminal court.

Had Mr Choi been properly advised before his interview was conducted, he would have made it clear that Mr Li was in fact the operator of the business and could have produced the lease.

24. The revocation of the premises licence would have a serious financial consequence for Mr Choi. It would effectively mean the restaurant would have to close as it would not be financially viable to only operate until 11pm without the sale of alcohol. The financial loss would be greater than the level of a fine the Court would impose for such an offence/s, or the issue of a Civil Penalty/ies.
25. Whilst it is accepted the case law supports the contention that a revocation or suspension of the licence can be used as a "punishment" and "deterrent" that should not be so in case where there is a considerable deficiency in the evidence adduced and the alleged criminal activity cannot be proved to the required standard.

Conclusion:

26. It is accepted that the business arrangements of leasing licensed premises has caused confusion and the Committee are likely to find themselves in a very difficult position. Given that, it is proposed to invite the Committee to impose a number of conditions so that the future of this premises is certain and clear. (see attached).
27. Prior to the incident CCTV was not installed at the premises but Mr Choi has now installed CCTV in the premises as this would have assisted his cases in showing that he did not act in the way in which the officers said he did.
28. The conditions it is contended are a reasonable and proportionate response to the review where it has not been proved that Mr Choi was responsible for the employment of illegal workers. It clarifies with certainty that any person leasing the premises from Mr Choi must obtain their own premises licence. This will allow Mr Choi to continue operating the premises if he chooses to but not find himself in a similarly humiliating and financially damaging position in the future should he choose to lease them.
29. His current intention is to operate the restaurant himself with his wife. He will become the DPS and his wife will shortly be taking the APLH course and obtaining her own personal licence. His wife will take on the majority of the day-to-day responsibilities when this happens, and the intention will be to vary the licence and name her as the DPS.
30. These conditions address the future concern of a third party employing illegal workers at the premises. Had Mr Li applied for his premises licence that is the one which would have been reviewed and if revoked Mr Choi could continue to operate the business himself under his own licence. Given all the facts, including taking into account the representations in support of the application that is clearly the most appropriate course of action.

Jon Wallsgrove

Partner

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