

Appendix 1

Recd 23/06/2016.

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

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

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.

I NEIL RHODES (CHIEF CONSTABLE LINCOLNSHIRE POLICE)

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Gate of India Restaurant 5 King Street,	
Post town Market Rasen.	Post code (if known) LN8 3BB

Name of premises licence holder or club holding club premises certificate (if known) Mohammed Jillul HAQUE.

Number of premises licence or club premises certificate (if known) 32UHB14004.
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Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 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)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises address**

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address; Lincolnshire Police Force Headquarters, Deepdale Lane, Nettleham, Lincolnshire, LN5 7PH
Telephone number (if any) 01522 558448
E-mail address (optional)

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

- | | |
|---|---------------------------------|
| 1) the prevention of crime and disorder | Please tick one or more boxes ✓ |
| 2) public safety | x |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | |

Please state the ground(s) for review (please read guidance note 2)

These premises have been granted a premises licence by West Lindsey District Council authorising the sale of alcohol Monday to Sunday 10:00 to 00:00 hours (midnight) daily and the provision of late night refreshment from 23:00 hours until 00:00 hours (midnight) daily with seasonal variations.

The premises operate as a restaurant and takeaway providing Asian cuisine and the Premises Licence is held by Mohammed Jillul HAQUE.

Home Office Immigration received intelligence and information suggesting that the premises were involved in the employment of illegal workers and obtained a magistrates court warrant based upon that information, allowing officers to enter and search the premises to that end.

.....

On 8th April 2016, following covert test purchasing at the premises by HMRC officers, Lincolnshire Police, Home Office Immigration and HMRC officers attended the restaurant.

At the time of the visit it was open and trading with customers being served. 12 persons were identified as working at the venue in a variety of roles. Whilst none of those staff members encountered proved to be illegal immigrants, none of the workers present were legitimately registered as employees of the business. There was no PAYE scheme in place or National Insurance contributions being made. Investigations into the business since the visit on 8th April 2016 by HMRC indicate that the premises had been operating in this manner for a period of nearly two years. Lincolnshire Police believe this is deliberate criminal activity.

During the visit other concerns in relation to how the business was operating were encountered. These concerns related to who actually has day to day control of the business, who holds the authority in relation to their responsibilities under the Licensing Act and the level of training of staff members.

.....

Section 11.24 of the Guidance to the Licensing Act states that reviews do not have to be directly linked or connected with the licensable activities at any premise.

Section 11.25 of the Guidance states that reviews are not part of criminal law and procedure and therefore the necessity to test the evidence beyond all reasonable doubt does not apply.

.....

Lincolnshire Police have no doubt that the premises licence granted by the authority, offers the provision of licensable activities to be conducted at this venue and that the premises licence holder illegally employs workers to facilitate this activity to his financial benefit and to the detriment of law abiding competitors whilst also defrauding the Government Tax office.

.....

Allowing these premises to continue to operate with the benefits of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of these Agency visits.

This review application is submitted with the circumstances having undermined the Licensing Objectives, namely the prevention of crime and disorder in that employing persons whilst failing to submit PAYE and National Insurance contributions is a crime.

The Licensing Act 2003 is clearly intended to prevent crime from occurring in relation to licensed premises but also to deter and prevent criminals from operating a premise under the auspices of a Premises Licence granted by the local authority.

The Section 182 statutory guidance at Section 11.26 states;
Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

It is difficult to believe that the undeclared employment of staff was occurring at this venue without the knowledge of the management of the premises.

And at 11.28 states "*Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crime, it is expected that revocation of the licence –even in the first instance- should be seriously considered*".

It is the submission of the Chief Constable that in the circumstances it would be appropriate and reasonable to seek the revocation of the premises licence in the first instance.

Please provide as much information as possible to support the application (please read guidance note 3)

APPENDIX.

A, Review application from 2014.

B, Decision notice from 2014 hearing.

C, Police representation for new application in 2014.

D, Decision notice from new application hearing in 2014.

E, Statement from HMRC Officer Michael Hale

F, Statement from Police Sergeant 1040 Enderby.

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day		Month		Year			
┆	┆	┆	┆	┆	┆	┆	┆

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

Licence Review hearing in 2014, whilst premises under control of previous Premises Licence Holder Sanu Meah, for employment of Illegal Immigrants- Licence Revoked.

Police Representation in 2014 in relation to New Application by current Premises Licence Holder and Designated Premises Supervisor Mohammed Haque- Licence Granted.


Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- 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 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 note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature  Sgt 1040 K.Enderby
.....

Date 8th June 2016
.....

Capacity for and on behalf of the Chief Constable for Lincolnshire Police
.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Sgt 1040 Kimble Enderby c/o Licensing (Alcohol) Lincolnshire Police Police Headquarters PO Box 999	
Post town Lincoln	Post Code LN5 7PH
Telephone number (if any) 01522 558448	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Appendix A

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

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.

I NEIL RHODES (CHIEF CONSTABLE LINCOLNSHIRE POLICE)

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description GATE OF INDIA 5 KING STREET	
Post town MARKET RASEN	Post code (if known) LN8 3BB

Name of premises licence holder or club holding club premises certificate (if known) SANU MEAH

Number of premises licence or club premises certificate (if known) N/K

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

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)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

Current postal
address if
different from
premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address LINCOLNSHIRE POLICE FORCE HEADQUARTERS DEEPDALE LANE NETTLEHAM LINCOLNSHIRE LN5 7PH
Telephone number (if any) 01522 558661
E-mail address (optional) CountyLicensingGroup@lincs.pnn.police.uk

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

- | | |
|---|---------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | x |
| 2) public safety | x |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | x |

Please state the ground(s) for review (please read guidance note 2)

This premise has been granted a premises licence by West Lindsey District Council authorising the sale of alcohol and provision of late night refreshment until midnight Monday to Saturday and until 23.30 hours on a Sunday.

The premises operate as a restaurant and take-away providing Asian cuisine.

The venue is operated and the Premises Licence held by Sanu MEAH.

The premises were visited on 24th April 2014, whilst under the control of the Licence Holder, by officers from Lincolnshire Police Licensing, Home Office Immigration and Her Majesty's Revenue and Customs (HMRC).

On this occasion, 7 Asian males were identified as working at the premises.

Subsequent checks identified that 1 male working as a waiter in front of house and 1 male working in the kitchen were illegal entrants to the United Kingdom and a 3rd male working in the kitchen had overstayed his permission to remain in the UK.

All 3 males were arrested at the premises for the relevant offences under the Immigration Act 1971.

This review application is submitted as relevant to 3 of the Licensing objectives, namely the prevention of crime and disorder, public safety and the protection of children from harm.

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to

licensed premises and also to deter and prevent criminals from operating a premise under the auspices of a Premises Licence granted by the local authority.

Section 11.24 of the Guidance to the Licensing Act states that reviews do not have to be directly linked or connected with the licensable activities at any premise, although in this case the offences are directly linked to the operation of the premises as a restaurant selling alcohol and providing late night refreshment and the staff actively involved in these activities.

Section 11.26 states that it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premise and affecting the promotion of the licensing objectives.

Section 11.27 states that there is certain criminal activity which should be treated particularly seriously, one of these being knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that persons leave to enter.

(It is pertinent to note that the previous guidance issued under s.182 in October 2011 did not include this offence in paragraph 11.29. This indicates the offence has now become a particular concern.)

Section 11.28 states that *'where 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.'*

Home Office Immigration is concerned with the apprehension, detention and management of persons illegally or unlawfully in the UK and as such their procedures and protocols are not directed towards supporting or promoting the Licensing Act and the licensing objectives, nor are they considered a responsible authority for the purposes of the legislation.

The Immigration, Asylum and Nationality Act 2006 amends immigration, asylum and nationality acts in relation to appeals; entry; deportation and removal of persons.

It also introduces legislation on employment of adults subject of immigration control; issue of employment penalty notices; associated employment offences; providing passenger, crew and freight information; a duty to share information; provide disclosure to other agencies and additional powers for searching, fingerprinting, examining and seizure of documents together with connected offences.

This particular legislation is ineffective in dealing with the specific issue of this review application and the consideration of this matter at a licensing hearing is therefore wholly appropriate.

Where an employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006.

Similarly, the HMRC may take action as a civil proceedings case and raise a tax debt against the business.

Such an Employer may also potentially breach further regulations in Appendix A attached.

Unfortunately any litigation or civil proceedings in relation to these offences is strictly confidential and the HMRC will not disclose any details in this respect to a public body, hence the specifics of this incident cannot be disclosed.

It should be quite apparent that there are potentially numerous criminal offences which may apply to the employment of illegal workers at this particular premise.

There can be no doubt that the premises licence granted by the authority, offers the provision of licensable activities to be conducted at this venue and that the premises user employs illegal workers to

facilitate this activity to his financial benefit and to the detriment of law abiding competitors.

It is also obvious that illegal workers are prone to exploitation by their employers in that;

Illegal workers are unable to declare themselves to the authorities to claim any sort of financial support or benefits as this would render them liable to detention,

Consequently they are more than likely poorly paid for the hours they are required to work and are not subject to the benefit of a minimum wage or restricted hours as prescribed in law, nor are they provided in most cases with anything other than the most basic of living accommodation.

Nor are they afforded the benefit of the protections offered by UK employment legislation.

In this particular case, 2 of those arrested were living in what could be described as basic and minimalist conditions in a single room provided on the top floor of the premises which contained 2 beds, a filing cabinet and a washing machine.

Ablution facilities appeared to be provided by the facilities on the floor below which were obviously for customers and there did not appear to be any shower or bathing facilities available on site.

It is accepted that the basic provisions were available in terms of shelter, heat, toilet facilities and running water although to the absolute minimum required.

Licence Holders have a responsibility to ensure the safety of those using their premises (Guidance to Licensing Act 2003 section 2.8).

There are obvious concerns in relation to public safety as to the competency and training of those staff with respect to matters of food preparation and levels of personal hygiene even though this may be covered by other legislation.

Illegal entrants will not have been subject to the appropriate Immigration Authority checks which would ordinarily have been conducted upon legal entry to the UK, and it is reasonable to suggest that there is every possibility that the Licence Holder may well unwittingly be employing persons who could pose a serious risk to the UK in terms of terrorism/extreme beliefs, etc. or to UK individuals by means of historic criminal activity (i.e. serious assault/serious sexual assault, etc.) which potentially would have been a bar to their lawful entry.

Lincolnshire Police have assisted in immigration visits to 12 licensed premises throughout the County this year and 58% of those premises have been found actively employing illegal workers.

Allowing this premise to continue to operate with the benefits of a premises licence will merely serve to perpetuate the criminal activity and human exploitation already apparent from the findings of this Immigration, HMRC and Police visit.

It is the respectful submission of the Chief Constable that it is an appropriate step to revoke the premises licence in order to promote the licensing objectives.

Please provide as much information as possible to support the application (please read guidance note 3)

Police body worn camera recording of the visit can be produced for viewing at Hearing.

Home Office Immigration can provide details of those arrested if deemed necessary.

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- 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 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 note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature  P.S. 1040 ENDERBY

Date 06/05/14

Capacity for and on behalf of Chief Constable of Lincolnshire Police

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

LEGAL SERVICES
POLICE HQ
DEEPDALE LANE
NETTLEHAM

Post town
LINCOLN

Post Code
PO BOX 999

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

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

Appendix A

The Income Tax (Pay As You Earn) Regulations 2003, (SI 2003 No. 2682)

Regulations 8, 21 - deduction and repayment of tax under the appropriate code.

- Regulations 22, 23, 28, 29, 31 - calculation and making of deduction or repayment.
- Regulations 9, 46, 47, 48, 49, 58 - employee for whom code not known.
- Regulation 66 - deductions working sheet (DWS).
- Regulations 68, 69 - payment of tax monthly by employer.
- Regulations 70 - payment of tax quarterly by employer.
- Regulation 97 - retention of employer's records.

Social Security Contributions and Benefits Act 1992

- Section 3 and paragraph 2 of Schedule 1 - earnings and earnings periods.
- Section 6 - liability to pay Class 1 NICs.
- Sections 8 & 9 - calculation of primary and secondary Class 1 NICs.
- Paragraph 3 of Schedule 1 - method of paying Class 1 NICs.
- Paragraph 3B of Schedule 1 - transferring secondary NIC liability to an employee.
- Paragraph 6 of Schedule 1 - power to combine collection of NICs with income tax.
- Paragraph 7 & 7A of Schedule 1 - penalties in the case of returns.
- Paragraph 7B & 7BZA of Schedule 1 - collection of NICs otherwise than through the PAYE system.

Social Security (Contributions) Regulations 2001, (SI 2001 No 1064)

- Regulations 2 -31 - assessment of Class 1 NICs.
- Regulation 67 and Schedule 4 - makes provision for Class 1 NICs to be paid, accounted for and recovered in a like manner as PAYE.
- Paragraphs 6 & 7(13) of Schedule 4 - prepare and maintain a DWS.
- Paragraph 7 of Schedule 4 - calculation of Class 1 NICs deductions.
- Paragraph 10 of Schedule 4 - payment of NICs monthly by employer.
- Paragraph 11 of Schedule 4 - payment of NICs quarterly by employer.
- Paragraph 11A of Schedule 4 - payment of NICs in respect of retrospective earnings.
- Paragraph 22 of Schedule 4 - end of year returns.
- Regulation 26 of Schedule 4 - retention of employer's records.

Appendix B



**Licensing Act 2003
Decision Notice for Review of Premises Licence**

Date of Hearing	25 June 2014
Members of Panel	Councillor David Cotton Councillor Jessie Milne Councillor Lewis Strange
Applicant(s) Name	Chief Constable of Lincolnshire Police
Premises Licence Holders Name	Mr Sanu Meah
Premises Address	The Gate of India, 5 King Street, Market Rasen Lincolnshire LN8 3BB
Date of Application	9 May 2014
Details of Application	Application for Review of Premises Licence under section 51 of the Licensing Act 2003 Relevant Licensing Activities: retail sale of alcohol (on the premises) and late night refreshment (indoors).

RESOLVED

that the premises licence for the Gate of India, Market Rasen be REVOKED

REASON

"We have considered all the evidence we have heard this morning and had regard to the papers we have had before the hearing.

We also have consulted the licensing policy of WLDC and the licensing objectives which have to be paramount in any licensing hearing and underpin everything a licensing committee has to determine, including protection of the public.

We are concerned that there was no evidence of the date of the intelligence. Thus we have disregarded the evidence as to whether it was known that illegal workers were at the premises before the visit on 24th April.

We have also had regard to the Home Office Guidance sec 182 11.27. "For 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". The documentation of any workers employed should be checked, at the time of employment, this was not done and admitted in evidence. There is a reasonable expectation that the period of the six days when these workers' legal status could have been checked during that time given the manager and the DPS were still in the UK. The Committee was also mindful that when the workers were employed on 18 April this was 12 days after the family bereavement and in evidence we were told that the restaurant remained open all the time and for usual hours.

The home office guidance says that a responsible licensing authority is expected to consider revocation of the premises licence even for a first offence, and we must have regard to that guidance and give full weight to this guidance.

We believe the licensing objectives have been undermined and breached in terms of protection of the public as these workers were unknown or their status not clarified. Also given the serious nature of illegal immigration, and employment of such illegal workers is something this licensing authority takes at the highest level, and is a criminal offence, the objective of the Prevention of Crime, given these offences, is also undermined."

Right of Appeal

1. Both parties were reminded of the right to appeal the above decision to the Local Magistrates Court within 21 days of being notified.
2. Both parties will be given a written copy of the decision notice within five working days of this hearing.

Signed Philip R. Hain

Date 27/04/2014

Licensing Team Manager

Appendix C



Licensing Act 2003

Representation by a Responsible Authority

Note: Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the sub-committee hearing.

Representations may be made at any time during a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority

Representations are only relevant to an application if they relate to at least one of the four Licensing Objectives listed below:

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

Please enter your details below:

Responsible Authority:	Lincolnshire Police
Contact Officer:	Sgt 1040 Enderby
Address:	Lincolnshire Police Headquarters, Nettleham, Lincoln.
Telephone Number:	01522 558437
E-Mail:	lan.figgitt@lincs.pnn.police.uk

Please provide details of the application to which your representation refers:

Name:	Gate of India
Address:	5 King Street, Market Rasen
Application Details:	New premises licence
Date Application Received:	04/08/14

Please provide details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box/es:

- **The Prevention of Crime and Disorder** x
- **Public Safety**
- **Prevention of Public Nuisance**
- **The Protection Children from Harm**

Representation:

This representation is submitted in relation to an application for a new premises licence for a restaurant at 5 King Street, Market Rasen.

The intention is to licence the premises to allow the sale of alcohol and the provision of late night refreshment.

This venue previously held a licence issued by the Licensing Authority which was subject to a review application from Lincolnshire Police dated 6th May 2014 in relation to the employment of illegal workers at the premises.

The decision of the Licensing Committee following the Review Hearing was to revoke that Premises Licence.

This decision is currently subject to an appeal to Magistrates Court by the relevant Licence Holder.

.....
The application for a new premises licence has been submitted whilst this appeal process is pending and seeks to licence the restaurant as previously.

Lincolnshire Police are concerned that there has been no apparent or obvious assessment of the risk of further employment of illegal workers at this venue in the application submitted.

The recent history of illegal working and the review hearing is known to the Agency acting for the Applicant.

There was no communication or negotiation with Lincolnshire Police prior to submission of the new application by the Applicant.

The premises intend to operate in the same manner as before being a restaurant and takeaway providing Asian cuisine.

Lincolnshire Police have communicated this real concern to the Agent in emails and have asked for the Applicant to consider and amend the application to include operating conditions which the Police believe would seriously mitigate and reduce the risk of future illegal employment.

'Illegal working often results in abusive and exploitative behaviour, mistreatment of illegal migrant workers, tax evasion and illegal housing conditions. It can also undercut legitimate businesses and have an adverse impact on the employment of people lawfully in the Country'.

Employers have a duty as opposed to a legal requirement to prevent illegal working in their venue.

This is achieved by conducting prescribed document checks on potential employees before employing them and is not considered an overly burdensome nor prohibitively financial procedure.

.....

Crime related to the employment of illegal workers may include but not exclusively, the following offences;

Section 21 of the Immigration, Asylum and Nationality Act 2006 creates a criminal offence of employing an adult knowing that he is subject to immigration control who has not been granted leave to enter or remain (unless granted permission to work by the Secretary of State), or whose leave to remain is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or subject to a condition preventing him from accepting the employment.

Where the employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006.

Similarly, the HMRC may take action as a civil proceedings case and raise a tax debt against the business.

This option would also potentially breach some of the following regulations;

The Income Tax (Pay As You Earn) (Amendment) Regulations 2013, (SI 2013 /521)

Social Security (Contributions) (Amendment and Application of Schedule 38 to the Finance Act 2012) Regulations 2013 (SI 2013/622)

Social Security (Contributions) Regulations 2001, (SI 2001 No 1004)

Any litigation or civil proceedings in relation to these offences is strictly confidential and the HMRC will not disclose any details in this respect to a public body.

It is quite apparent that there are potentially numerous criminal offences which may apply in cases of the employment of illegal workers.

If possible, please suggest alterations to the application that would resolve the problem mentioned above, again paying attention to the **Licensing Objectives**:

Right to work checks shall be conducted on all potential employees prior to their employment in any capacity at the venue

Conduct those checks in accordance with the Home Office Code of Practice for employers as current at that time

*Retain written records of these checks to contain the following information;
Date of the checks, identity of the individual (full name; date of birth, country of origin) documents checked and identifying marks; result of the check; date for recheck if required according to the individual status*

The section 182 Guidance to the Licensing Act 2003 states at section 18 ss4 in relation to conditions;

'...those drafting conditions should endeavour wherever possible to ensure that each individual condition:

- (1) Is necessary for the promotion of the licensing objectives*
- (2) Arises from, or relates to, the proposed licensable activity*
- (3) Is proportionate to the mischief to be avoided*
- (4) Does not derogate from an entitlement enshrined in statute*
- (5) Is not inconsistent with the requirements of policy*

- (6) *Has a meaning which would be clear and unambiguous ideally to a lay person*
- (7) *Is self-contained and does not require reference to some other document*
- (8) *Does not require the licensee to achieve some end beyond his control*
- (9) *Is capable of enforcement if appropriate, in the event of a breach; and is*
- (10) *Intra vires the power of a licensing authority.*

Responsible authorities must not invite conditions which may be adequately dealt with under existing powers.

Lincolnshire Police have suggested conditions which are believed to meet the above considerations.

There is no formal legal requirement at this time for any employer to conduct checks of their employees' right to work.

The Law does however offer an employer a statutory excuse in relation to any civil penalty laid against them in relation to employing illegal workers.

This statutory excuse only applies if an employer is able to demonstrate that they have exercised the requirements of the Home Office Code of Practice.

Some employers assume their employees have a right to work rather than choosing to determine the fact (knowing).

Have you contacted the applicant to discuss this representation?

Yes x No

Have you contacted the Licensing Section to discuss this representation?

Yes x No

Do you consider further discussion could resolve the issue?

Yes No x

Do you intend to attend or be represented at any sub-committee hearing?

Yes x No

Please tick this box if you consent to any notice of any hearing being sent to you to the e-mail address provided by you above.

(please note if any notice is sent to you by electronic means, you will also receive confirmation of the same in writing).

Please return this form to the following address:

**Licensing Team
West Lindsey District Council
Marshall's Yard
Gainsborough
Lincolnshire
DN21 2NA**

Phone: 01427 676676 or fax 01427 675159

or e-mail to:-

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Appendix D

Decision Notice for determination of New Premise Licence

Date of Hearing	19 September 2014
Members of the Licensing Sub-Committee	Councillor Irmgard Parrott Councillor Paul Howitt-Cowan Councillor Chris Day
Applicant's Name	Mohammed HAQUE
Details of Application	Application for premise licence at The Gate of India, 5 King Street, Market Rasen, Lincolnshire LN8 3BB under s17 Licensing Act 2003
Relevant Licensing Activities	Retail sale of alcohol (for consumption on and off the premises) and late night refreshment (indoors)

RESOLVED that:

the premises licence for the Gate of India, Market Rasen be **GRANTED** as applied for.

REASONS:

The Sub-Committee, having had due consideration for the Licensing Act, Section 182 guidance, Licensing Authority's Policy Statement and any relevant case law, and submissions, both written and oral, by the parties, have reached the decision to grant the licence as applied for.

Despite the representations by the police, the Sub-Committee must make an evidence based decision. No evidence had been presented to this Sub-Committee of any history of employment of persons not entitled to work in the UK by the applicant in the running of any other business. The applicant has assured the Sub-Committee that this is an entirely new and separate operation, and whilst some of the current employees shall remain, management of the premises, including the hiring of staff, will not be dealt with by any persons currently involved with the premises.

Therefore the Sub-Committee does not feel there is sufficient evidence to justify the conditions requested, although the police were clearly only acting to safeguard the premises licence holders. There is a review process which allows action to be taken in the event that there are any problems in the future.

Applicant has the right to appeal to the magistrates' court within 21 days of being notified of this decision.

2. Both parties will be given a written copy of the decision notice within 5 working days of this hearing.

Signed Philip R. Hain

Date 24/09/2014

Licensing Team Manager