

## LICENSING ACT 2003

Sections 17, 18 and 23 and Licensing Act 2003 (Hearings) Regulations 2005/44 and Licensing Act 2003 (Hearings) Amendment Regulations 2005/78.

### **NOTIFICATION OF REJECTION OF AN APPLICATION FOR A PREMISES LICENCE WHERE RELEVANT REPRESENTATIONS HAVE BEEN MADE**

**PREMISES:** Best One Express, 8 Bridge Street, High Wycombe HP11 2PT

**To:**

The Applicant – Mr Hariram Raveendran  
Any Persons who made Relevant Representations  
Any Responsible Authority who made Relevant Representations  
The Chief Constable of Thames Valley Police

#### **Take Notice**

**THAT** following a hearing of the Licensing Sub-Committee

**ON 31<sup>st</sup> March 2022**

**BUCKINGHAMSHIRE COUNCIL as the Licensing Authority for the Premises**

**HAS RESOLVED**

**TO REJECT THE APPLICATION FOR A PREMISES LICENCE.**

#### **Reasons for the Panel's Decision**

The Panel were referred to the case of *Retrobars Wales Ltd v Bridgend BC [2012] EWHC 3834 (Admin)* by the legal advisor and noted that in reaching their decision as to whether to grant the application for a premises licence they were entitled to consider who was to be the "controlling influence" behind the business which was to have the benefit of the premises licence.

The Panel noted the history of the premises licence, which was originally held by Kanaganayagam Shanthakumar and which had been revoked by Wycombe District Council at a licensing subcommittee hearing on 20<sup>th</sup> January 2020; a decision which was subsequently upheld on appeal before Wycombe Magistrates Court on 11<sup>th</sup> March 2022. Whilst the revocation of the premises licence was being appealed the current applicant successfully applied to have the premises licence transferred into his name on 9<sup>th</sup> December 2021. The current application for a premises licence was made by the applicant in January 2022.

The Panel took account of the statement provided by Gill Sherratt dated 29<sup>th</sup> March 2022 and the accompanying application hearing pack which contained copies of the following documents in support of the Application:

1. Agreement for the Sale of a Business dated 17<sup>th</sup> March 2022 between (1) Kanaganayagam Shantham (the Seller) and (2) Raveendran Hariram and Shalini Hariram (the Buyers); and
2. Underlease of 8 Bridge Street, High Wycombe dated 17<sup>th</sup> March 2022 between (1) Kanaganayagam Shantham (Landlord) and (2) Raveendran Hariram and Shalini Hariram (Tenants)

The Panel noted that on more than one occasion the Applicant's representative directed the Panel's attention to the documents detailed above as demonstrating that Mr Kanaganayagam Shanthakumar would not be involved in the business moving forward.

However the Panel made the following observations in relation to the two documents which had been produced:

- The Seller/Landlord was named as "Kanaganayagam Shantam" rather than "Kanaganayagam Shanthakumar" although the applicant admitted that they were the same person.
- The Applicant's names were reversed on both documents. The Applicant stated that his name is Hariram Raveendran as recorded in the application for a premises licence and following his customs his wife took his first name as her surname and her name was correctly recorded on the documents. No explanation was provided for the errors contained in the documents.
- The address for the Buyers in the contract and as the Tenants in the Underlease incorrectly referred to 35 Underwood Road whereas the applicant has given his address as 36 Underwood Road in the application.
- In addition, the postcode for the Buyers was incorrect in the contract and in fact duplicated that for the given address for Mr Shantam aka Shanthakumar.
- The documents were both dated 17<sup>th</sup> March 2022.
- Under the terms of the contract following the payment of an initial deposit of £7,000 the Applicant and his wife are obliged to pay Mr Shantham aka Shanthakumar £1,000 per month thereafter for the next 13 months.
- In addition, under the terms of the Underlease annual rent of £12,000 is payable by the Applicant and his wife to Mr Shantham aka Shanthakumar for the next 5 years.
- Mr Shantham aka Mr Shanthakumar continues to have an interest in the premises as a landlord and has certain rights and responsibilities as set out in the Underlease.
- The Panel had not been provided with a copy of Mr Shanthan aka Shanthakumar's lease with the freeholders. The Underlease made no reference to the terms of that lease and whether it allowed for the creation of an Underlease or whether the consent of the freeholder was required.

The Panel noted that the documents appeared to have been produced following a request for such documents by the Licensing Authority in their representation dated 3<sup>rd</sup> March 2022.

The Panel also noted that during an enforcement visit on 2<sup>nd</sup> February 2022 the applicant had confirmed that images timed at 16.26 hours on 20<sup>th</sup> January 2022 were Mr Shanthakumar and that he was working in the premises. The Applicant stated that Mr Shanthakumar was “a friend” and worked twice a day for 4 – 5 hours. He confirmed that Mr Shanthakumar was employed at the premises and “only works when I need him”. The documentation produced shows that Mr Shanthakumar remained the owner of the business on 2<sup>nd</sup> February 2022.

The Panel noted that despite the production of the documents set out above the objections to the application by the Thames Valley Police and the Licensing Authority remained.

The Panel took account of the proposed conditions put forward by the applicant’s representative including a condition that:

*“Mr Shanthakumar is prohibited from having any involvement in the retail business, paid or otherwise. He is prohibited from being on the premises to undertake any activities connected to the operation of the sale of alcohol including serving behind the till, .....”*

The Panel accepted that no breaches of conditions were found during the course of the most recent inspection and that the applicant was not involved in the breaches which led to the revocation of the previous premises licence, however, the Panel observed that there is a clearly established relationship between the applicant and Mr Shanthakumar.

The documents provided by the applicant rather than demonstrating that Mr Shanthakumar would not be involved in the business moving forward confirmed that he retained an interest in the business whilst the terms of the contract for the sale of the business remained to be fulfilled and had an interest in the premises through his lease with the freeholder. More importantly in the absence of a copy of the lease between Mr Shanthakumar aka Shanthan and the freeholder the Panel could not be satisfied that the Underlease was legally binding and that the applicant had a legal interest in the premises. The Panel did not believe that these issues could be resolved by granting of a premises licence subject to conditions.

On the balance of probabilities, the Panel did not have any faith that the applicant would have control of the business and the premises. In accordance with the *Retrobars* case, the Panel formed the view that Mr Shanthakumar aka Shanthan retained a controlling influence in the business and that the licensing objectives, in particular the prevention of crime would be undermined if the application was granted.

In making their decision, the Panel also took into account the legislation, the statutory guidance and the Council’s own licensing policy.

The Panel also took into account the relevant provisions of the Human Rights Act 1998, namely:

- Article 6 – the right to a fair hearing
- Article 8 – respect for private and family life

- Article 1, First Protocol – peaceful enjoyment of possessions.

Any Party aggrieved by the Decision given in this Notice may make a written Appeal within 21 days to the Clerk to the Justices, Wycombe and Beaconsfield Magistrates Court, Milton Keynes Magistrates Court, 301 Silbury Boulevard, Milton Keynes, Buckinghamshire MK9 2AJ.

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by a horizontal line extending to the right.

Clerk to the Licensing Sub-Committee

Date: 6<sup>th</sup> April 2022