

# NORTHAMPTON BOROUGH COUNCIL

## LICENSING SUB-COMMITTEE

Tuesday, 8 June 2010

**PRESENT:** Councillor Caswell (Chair), Councillors Reeve and Duncan

M Kassam

Solicitor

P Bayliss

Licensing Officer

### **Applicant for the Review**

PC Dave Bryan

Licensing Officer, Northants Police

Sgt Mark Worthington

Northants Police

### **For the Representor**

Leo Charalambides

Counsel

Arumugasamy Kanthavel

Premises Licence Holder

Mr Baker

Trainer for Personal Licence Holders

## **1. CRESCENT OFF LICENCE, 179 WELLINGBOROUGH ROAD**

The Licensing Officer outlined the purpose of the hearing explaining that an application had been received from Northamptonshire Police on 12<sup>th</sup> April 2010 with evidence to support the failure of the licensing objective for the Protection of Children from Harm. The Licensing Officer then explained the procedure of the hearing.

### **Applicant for the Review**

PC Dave Bryan, a Licensing Officer for Northamptonshire Police, explained the background of the review. The premises had been the subject of two failed Test Purchase Operations on the 12<sup>th</sup> December 2009 and 25<sup>th</sup> March 2010 by Northamptonshire Trading Standards Department and Northamptonshire Police. There had been two sale of alcohol in just over three months and it was considered that it needed to come to the attention of the Committee.

Northamptonshire Police were aware that the links between anti-social behaviour and underage sales of alcohol were well documented and ensuring alcohol was sold and consumed responsibly was a key priority. Extra funding had been received from the Government to tackle the problem and in these circumstances suspension should be considered. PC Bryan referred to Bassetlaw District Council v Worksop Magistrates' Court 2008 where premises had their licence suspended for underage sales. On appeal and Judge had ruled that the suspension be overturned and six conditions were imposed on the licence. The Licensing Authority challenged this as the Judge had considered only the provisions in the guidance which were dealing with situations not involving crime. There had been a crime committed so therefore wider considerations had come into play, including the prevention of crime, and, if not punishment, at least deterrence. The judge had not given reasons why he did not follow the guidance. In this case, if suspension were considered, then there was case law available to follow.

## **Questions to the Applicant**

In response to a question, Sgt Worthington explained that the Comprehensive Area Assessment which was run by the Government had given Corby and Northampton a 'Red Flag' as they were under performing. The local authority had developed a strategic alcohol plan strategy and part of the funding was given to the Police to run test operations.

## **Representation by the Respondent**

Mr Charalambides, Counsel for the Respondent informed the Committee that consideration should be given as to whether this case warranted deterrent or was a standard case and promotion of licensing objectives. There was no CCTV condition or Challenge 25 conditions on the licence and it was important for the premises to demonstrate training. It was a small store which was ran by husband and wife who had occasional staff but now had a permanent member who would have training. Therefore the conditions could be offered and would not be controversial. There was a concern of the age of the people of the tills and a condition could be imposed that no one could operate them under the age of 21. Of the three employees, two people were Personal Licence Holders and the third would be shortly. They had gone through the course and were more focused now. They had already met the financial contributions made and had received accredited licensing training. The incident on 12<sup>th</sup> December 2009 would be concluded on 11<sup>th</sup> June 2010 at the Magistrates Court where the respondent would plead guilty. He could receive a financial penalty of up to £5000, have his licence suspended or lose it.

Mr Charalambides confirmed that the Police were happy with the conditions offered and were willing to make any other appropriate steps. Anything else would be disproportionate.

## **Questions to the Respondent**

In response to a question from the Solicitor, Mr Charalambides confirmed that the shop was a small convenience store which stocked other provisions and was approximately 600 sq ft. Training had already been given to the respondent.

## **Summing up by the Applicant**

PC Bryan suggested that the Committee should consider why the Government had given Northampton a 'Red Flag', which was due to the irresponsible sale of alcohol. He suggested that the Committee should not be concerned with the outcome at the Magistrates Court. What they were requesting followed precedents and was not something new.

## **Summing up by the Respondent**

Mr Charalambides suggested that other mechanisms could provide a solution and therefore considered that no further action would be required. The High Court had confirmed that where existing means were available to use a solution and the Licensing Act should not replicate a double deterrent. Each case had to be judged on its own merits and not to repeat the same mistakes. If a suspension was considered then it should be for the least possible time.

## **The Determination**

There being no further questions, the Sub-Committee adjourned at 17.05 to make a decision and the Solicitor was called for advice.

The Sub- Committee reconvened at 17.24.

Having regard to the Licensing Act 2003 and the guidance there under; the Council's Licensing policy statement and the representations made, the following decision was reached:

It had been decided unanimously that on a balance of probability the committee was satisfied that the current operation of the premises did not promote the following Licensing Objective: -

4. The Protection of Children from Harm.

Therefore the Committee considered that it was necessary and proportionate to:

1. Suspend the Licensable activity of the sale by retail of alcohol for consumption off the premises for a period of one month.

Furthermore the Committee had decided to impose the following conditions:-

1. Install CCTV within the premises with recordings being retained for no less than one months and to include the till area.
2. That the premises do adopt a 'Challenge 25' Policy.
3. That no one under the age of 21 years be at the till for the sale of alcohol.

The Chair explained that Mr Arumugasamy Kanthavel had a right to appeal against the decision and it would be in place after 21 days.

The meeting concluded at 17.30

