

NORTHAMPTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 12 August 2010

PRESENT: Councillor Caswell (Chair)
Councillors Chaudhury and Reeve

M Rahman	Solicitor
L. Faulkner	Licensing Officer

For the Applicant

Mr Botkai	Winckworth Sherwood Solicitors
Viv Thyer	HKS Retail Ltd Area Manager

Representors

PC Tam Dunn	Northants Police
Sgt Alexander-Lloyd	Northants Police
Mr Tyrrell	Resident

1. QUESTIONS HKS MILL LANE CONNECT, DALLINGTON, NN5 7AS

The Chair introduced the Committee and welcomed everyone to the meeting. Further papers were circulated by Northants Police.

Outline of the Application by the Licensing Officer

The Licensing Officer outlined the application for a variation to the premises licence as set out in the report and highlighted the request to increase the hours of licensing activities to 24 hours, seven days a week. She also summarised the objections that had been received from Northants Police on the grounds of the Licensing Objective of Crime and Disorder and Mr Tyrrell on the grounds of crime and disorder and public nuisance. She then explained the procedure for the hearing.

Application for the Review

Representing the Applicant, Mr Botkai confirmed that the application was for the variation of extending the licence. The licence allowed the sale of alcohol between 8am and 11pm and there were limited conditions on the licence which could have expired. The premises were a large BP Connect store and were a franchise with HKS. The shop doors closed from 11pm until 5 or 6am, depending on the manager, during which time the customers were unable to enter into the store and paid through a night hatch. Northampton Borough Council Statement of Licensing Policy stated that a shop should be able to sell alcohol to match when it was open and the applicant wanted to do this. The Secretary of State Guidance stated that the Licensing Act should not be used as a mechanism for controlling anti-social behaviour where other legislation existed to control this. They had received the objections and had communicated with the Police although it had not been resolved. They had been prepared for conditions to be applied to the variation of the licence which the Police had agreed to with the amendment of operating the night hatch between the hours of 2300 and 0500 although, the Police still objected to the application as a whole. The conditions were circulated at this point.

Mr Botkai confirmed that the store had adopted the 'Challenge 25' whereas the conditions

were 21 or older and the Refusals book and Incidents book was managed and well maintained. The night hatch closing time was amended to 0500 hours to provide the store more flexibility on their opening hours. The Police had raised objections based on statistics and incidents in the area which they had allocated to these premises. In the statement from Sergeant Worthington it referred to 43 incidents between July 2009 and July 2010 which consisted of 12 incidents that related to fraud and forgery which were not alcohol related, 10 thefts although there was no indication of what the theft related to. He considered that 10 thefts over a period of 12 months as being very low. There had been three incidents of violence against a person and alcohol had not been a contributory factor, one road incident and criminal damage. He considered that very little could be attributed to this application. He believed that the Petrol Station was the 'eyes and ears' of the area and the staff did call the Police when incidences occurred although this would be a statistic against them so the statistics should be considered very carefully. The applicant, HKS, did not expect to sell a large amount of alcohol and the doors would be closed so the cashier would have to get it out of the shop. If the customer wanted alcohol then HKS wanted to supply it to them and it would not be consumed on the premises. They had no problems at present with the licence.

An objection had been received from Mr Tyrrell, who was a resident in the area and had expressed concerns that the site was en route from local pubs and clubs as well as litter problems. The store management could be spoken to about the litter problems and they already had a late night refreshment licence and had no review of it. Publicly when a 24 hour licence is applied for people do object although he considered it would be safer to grant it in the knowledge that if problems occurred then a review can be brought. They had no review and no complaints and asked to grant a small variation of the licence with the conditions suggested. Their own policy included the general control of nuisance and anti social behaviour in the area of the shops and they should be able to sell alcohol unless there was a good reason not to.

Questions to the Applicant

In response to a question from Councillor Reeve, Mr Botkai confirmed that the applicant considered that the extended licence would benefit their customers.

PC Tam Dunn confirmed that the Police were satisfied with the conditions proposed but they did not address the issues and problems which were associated with the garage. The conditions suggested were in place anyway and would not make any difference. The Think 21 or 25 system would be part of the licence mandatory conditions in October 2010. He did not consider it relevant to add the conditions unless they were not already doing it.

Mr Botkai confirmed that the conditions were added as in his experience, if they were not then the Police would have asked for it.

In response to a question from Mr Tyrrell, Mr Botkai confirmed that no study had been completed for whether more alcohol was sold to foot customers or car customer as there was not a concern for it.

Representation by the Representors

PC Dunn confirmed that the conditions which had been circulated were now correct. He advised that Sergeant Worthington had put in an objection and outlined the details of the letter included in the report. The crimes which were broken down did fall within the crime prevention measures and there should be concern for the potential of them getting worse.

Sergeant Alexander-Lloyd of the Spencer SCT Team confirmed that the incidents recorded for rowdy and inconsiderate behaviour was a concern and were reported by the residents. The garage was in a prominent position and anti social behaviour was a priority. The three violent offences should be noted but the contributory factor was not influenced by alcohol

and the other offences should be reviewed as they may not be a true reflection. They were concerned about the extension of the licence as violence was a concern to the community which she represented and alcohol was known to contribute to it.

PC Dunn explained that when incidences were recorded it was the serious factor that was noted rather than the contributory factor. For example in a robbery the robber may have had alcohol only the robbery would be recorded, as it was the more serious offense.

Mr Botkai advised that there were problems in the area in general which was not associated with the garage for example a man had beat his girlfriend in the store and had not bought alcohol.

Sergeant Alexander-Lloyd advised that this was one incident in 43 although she confirmed that they had not received any complaints from the public about the garage and they held surgeries locally.

In response to a question from Mr Tyrrell, Sergeant Alexander-Lloyd confirmed that the 12 incidents referred to rowdy and inconsiderate behaviour but had no further details as to whether they were foot or car customers.

Mr Tyrrell explained that he had suffered from footfall customers and not the car customers to the garage other than late at night where people drove from Spencer and parked outside his property to visit the garage and it had been known to suffer noise and disturbance up to 3am. He confirmed that the customers of the garage stood at the rear of his premises drinking before they went out in the evening and again on their way back. If the licence were granted then they would suffer further as people would drink on their way home from a night out. He had submitted a petition which was signed by the local residents which opposed the variation and since then further people and the Kings Heath Residents Association have told him of their concerns. He confirmed that he was a regular user of the garage and it was never known where the alcohol would be consumed. He had already suffered litter and noise which was not reported to the Police unless it was out of hand as he did not wish to inundate them with these matters.

In response to a question from Councillor Reeve, Mr Tyrrell confirmed that he had lived in his property for 37 years and was there when the garage was built and before it was granted a licence. When the garage was granted the licence he confirmed that he noticed more anti social behaviour and a greater footfall.

NBC Solicitor advised Mr Tyrrell that he could only speak for himself and not for the other residents in the area. He confirmed that the other residents had the same opportunity to submit a representation as he did.

In response to a question from Mr Tyrrell, the Licensing Officer advised that the notices had been checked that they were displayed properly and the premises had been visited on 30th June 2010. It was also advertised in the Chronicle and Echo on the 29th June 2010.

Summing up by the Applicant

Mr Botkai confirmed that the Committee had to make a decision on the evidence presented and they had not heard that the sale of alcohol to 11pm had caused crime and disorder and public nuisance, as the garage was generally quieter at night. Customers did not need to park away from the garage as there was parking available at the site. People would just as easily be able to walk into an Off Licence and purchase alcohol and Mr Tyrrell would continue to be a welcomed customer of the garage. If the variation were allowed there would be an opportunity to review the matter if there were problems and HKS would be willing to cease the extended hours. They wished to have the 24 hours to benefit the

licence and did not believe it would make a difference and the residents were unlikely to notice it either.

Summing up by the Representor

PC Dunn confirmed that the information presented had showed problems over the past 12 months and would encourage more after 11pm. The conditions suggested only addressed the premises itself and not the area away from the premises. They were satisfied the way things were and asked the Committee to consider the Guidance of the Licensing Act. Operation Nightsafe was a part of the Police's strategy with a zero tolerance against alcohol and he referred the Crime and Disorder Act that stated the way to deal with offences were to prevent them from happening. He confirmed that they did not want to come back to the Committee to try and prevent what they were trying to prevent at this hearing and did not want to see people suffering any further and asked for the application to be refused.

The Determination

There being no further questions, the Committee adjourned at 16.33 to make a decision and the Solicitor was called for advice.

The Committee reconvened at 17.08.

Having regard to the Licensing Act 2003 and the guidance thereunder; the Council's Licensing Policy statement and the representations made. The following decision was reached:

That the application to vary the Premises Licence to extend the sale of alcohol to 24 hours daily be refused.

The Committee believed that on the balance of probabilities, if the application were to be granted, there would be an adverse affect on the following licensing objectives:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance

The Committee also believed that the local residents would be the people most adversely affected by a failure to uphold these Licensing objectives.

The Chair explained that the Applicant had the right to appeal the decision after 21 days.

After the decision had been made, Mr Botkai requested that the Committee consider allowing the sale of alcohol to be from 5am.

The Chair advised that the decision had been made and therefore another application would be required to consider his request.

The meeting concluded at 17.10

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