

# NORTHAMPTON BOROUGH COUNCIL

## LICENSING SUB-COMMITTEE

**Monday, 23 May 2011**

**COUNCILLORS PRESENT:** Councillors Wire, Eldred and Nunn  
**OFFICERS:** Mohammed Rahman (NBC Solicitor)  
Phillip Bayliss (Principle Licensing Officer)  
Louise Faulkner (Licensing Administrator)

**FOR THE APPLICANT:** PC Dave Bryan (Northamptonshire Police)  
Sgt Jen Helm (Northamptonshire Police)

**FOR THE REPRESENTORS:** Gill Sherratt (Legal Advisor)  
Jayeshkumar Patel (Licence Holder)

### **1. BARGAIN BOOZE, UNIT 11, LIMEHURST SQUARE, DUSTON, NORTHAMPTON, NN5 6LP**

The Chair introduced the Sub-Committee and welcomed everyone to the meeting.

#### **Outline of the Application by the Licensing Officer.**

The Licensing Officer outlined the application for a review of a Premises Licence in respect of Bargain Booze, Unit 11, Limehurst Square, Duston, Northampton, NN6 6LP. The Application was submitted by PC David Bryan representing Northamptonshire Police and related to events between 16 July 2010 and 18 January 2011. The application for a review was submitted on the grounds of one of the Licensing Objectives contained within the Licensing Act 2003; -

- 1) The prevention of crime and disorder; and
- 2) The protection of Children from Harm.

The Licensing Officer then explained the procedure for the hearing.

#### **Application for the Review of a Premises Licence**

PC Dave Bryan, the Applicant, informed the Sub-Committee that Northamptonshire Police had applied for the review in relation the premises not meeting the Licensing Objectives of the prevention of crime and disorder and the protection of Children from Harm. Evidence was provided in the form of two test purchase operations where Mr Patel sold alcohol to minors. There was a further incident on 18 January 2011 where a Community Support Officer (PCSO) witnessed the sale of alcohol to a minor. It was confirmed that on this occasion the customer had been asked for identification and a driving licence was provided which stated the minor was 16 years old. The minor did not give a statement and a Penalty Notice was enforced. Mr Jayeshkumar Patel was not interviewed on this incident but this incident was an additional reason as to why a review of Licence had been applied for. The e-mail regarding the incident and included in the agenda pack was noted as additional evidence to the two official test purchase sales.

#### **Questions to the Applicant**

Ms Gill Sherratt wished to question how incidents noted in the e-mail and relating to Mr

Patel and had been backed up with evidence in order for the Sub-Committee to give this appropriate weight. It was confirmed that there was information and logs on the Northamptonshire Police system. This had been obtained from Street Surgeries and from concerned residents. No evidence of this had been offered to the Sub-Committee as the Application was based on the three sales to minors and that additional information was provided to give weight and substance to those three sales. PC Bryan did agree that if the Application had been raised purely based on this incident Northamptonshire Police would have included evidence in regard of the incident, and it was confirmed that the Sub-Committee could give whatever weight they deemed necessary to this information as the application was based on the three incidents in total.

## **Representation by the Representors**

Ms Sherratt, acting for Mr Patel, wished to note how Mr Patel had owned the business since 2010 and had been a Premises Licence holder for many years previous to that. She stated that Mr Patel worked on the premises 15 hours a day, every day, in addition to his wife and occasional help from one of their children. Mr Patel understood the reason for the hearing and was in no way disputing the evidence put forward in regard of the test purchase operations. Ms Sherratt did note that they disputed a few points in the e-mail but acknowledged that PC Bryan had already confirmed that they did not place much weight on this evidence.

The issues presented to the Sub-Committee in regard of the test sale purchases had raised some issues with the premises; the meeting of the Licensing Objectives and this had been dealt with head on. Reasons presented as to why Mr Patel had not realised the customers were minors, was due to a lack of training and the national issue of grandfather rights, where people who had Licences prior to the Act in 2005 were automatically granted a new Licence with no requirement to be trained on the new legislation. Due to this Mr Patel was still challenging if customers were under 18 rather than using the 'Challenge 21' 'Challenge 25' policies, this was admitted by Mr Patel in court and he was convicted and fined. In regard of the Incident on 19 February 2011 Mr Patel confirmed that he had asked the minor for ID and on presentation of a Provisional Driving Licence he miss read the date of birth as 1990 rather than 1994.

Ms Sherratt accepted the severity and seriousness of the incidents but wished to note how Mr Patel was a responsible Licence Holder. He had spent the 10 years previous as a Licence Holder with no incidents, and then the three incidents in the review occurred in the last twelve months. Ms Sherratt wished to state that the comments that had been raised in the e-mail (included in the agenda pack) had been disputed by Mr Patel and wished to note that this evidence was unsubstantiated. Ms Sherratt confirmed that she had tried to obtain further evidence on these matters but Northamptonshire Police had refused this.

Ms Sherratt provided the Sub-Committee with a record of refused sales since Mr Patel took over in 2010 and it was confirmed that he personally had refused 537 sales. Mr Patel had now been officially retrained and understood the 'Challenge 21' and 'Challenge 25' policies.

Ms Sherratt confirmed to the Sub-Committee what their options were in regards of this case, stating that understandably they would want to take a course of action against Mr Patel. She noted that it was for them to either take no action, but admitted that improvements needed to be made, that they could remove Mr Patel as Designated Premises Supervisor, impose Conditions on the Licence or suspend the Licence. She noted that any decision should be necessary and proportionate and as Mr Patel had already been punished for the criminality by the courts. It was her view that conditions should be imposed and a sample of potential conditions was offered to the Sub-Committee for their determination. She noted the case of 'Prasannan v Royal Borough of Kensington' where the Authority's Licensing

Sub-Committee revoked a Premises Licence on the ground of failure to promote Licensing Objectives and the Appellant's appeal against the revocation decision succeeded. The Judge had deemed the Licence Holder as the worst licensee, but the Judge also believed that adding conditions to the Licence was a strong enough punishment in that instance and gave the licensee one final chance. Ms Sherratt believed that in accepting her conditions the Police would be able to bring Mr Patel back to the Licensing Authority upon breaking those conditions. Ms Sherratt reiterated to the Sub-Committee that Mr Patel had held a Licence for 10 years and had no problems other than in the last 12 months.

### **Questions to the Representors**

PC Bryan questioned if Mr Patel held a Licence to sell alcohol, prior to 2005 what type of Licence he held, what training he had undertaken at that time and why Mr Patel did not apply to update his training, regardless of this not being a compulsory condition. Mr Patel confirmed that he had held a Justice's Licence in 2000 and all training had been taken in-house with various large hypermarket chains. At that time he noted that he was involved in the purchase of alcohol but did not work on checkouts and therefore never dealt with the issues of 'Proof of Age'. He confirmed that post 2005 and the new legislation, he had not been asked to retrain so used the information he had prior to 2005.

PC Bryan questioned the till prompt system used at Mr Patel's Premises, what question was asked, what options were available, if a transaction has to be in process for the question to be selected and if the till prompt was open to abuse. Mr Patel confirmed that the till prompted a 'Challenge 25', which he understood before his recent training as over 18, and if you select yes the till would then give a selection of valid ID. He also confirmed that a transaction had to be in process to use the till prompt but he could not confirm if this system was open to abuse. PC Bryan asked Mr Patel if he had participated in training literature issued frequently by Bargain Booze. Mr Patel confirmed that he received the training literature but had previously ignored it, as he believed his training was up to date.

In regard of the conditions offered, Members asked how Mr Patel would achieve these conditions. Mr Patel confirmed that he was now trained in the new Licensing Act, along with the members of his family that work at the premises, and they would all be partaking in 3 monthly training reviews. PC Bryan wished to note that the conditions were, in the main, good practice but the majority were not enforceable as Licensing Conditions.

### **Summing up by the Applicant**

PC Bryan commented that in bringing the application for review, the Police hoped that the Sub-Committee would consider a suspension of the Licence. He referred to the Section 182 guidance where it is recommended that certain criminal acts taking place on Licensed Premises be taken more seriously. One of those is using the premises for the purchase and consumption of alcohol for minors. He also noted well-documented research that underage drinking leads to Anti-Social Behaviour, which is a key priority for Northamptonshire Police, crime and disorder and increasing the chances of the minors becoming victims of crime. PC Bryan raised the case of *Bassetlaw District Council v Worksop Magistrates Court* where a Premises Licence holder had their Licence suspended after serving alcohol to minors. A Suspension was granted by the Sub-Committee and on appeal to the magistrates removed the suspension and added conditions to the Licence. The Council appealed further and the suspension was sanctioned and permission for Judicial Review was granted.

PC Bryan also reiterated that the conditions supplied were unenforceable but should be actions Mr Patel is carrying out regardless.

### **Summing up by the Representors**

Ms Sherratt acknowledged that the Applicant had made mistakes; they did not dispute the wrongdoing and believed that the review was justified. She reiterated that the wrongdoing was down to a lack of training and understanding of the new Licensing Act and policies such as 'Challenge 21' and Challenge 25'. Ms Sherratt did not believe a suspension was proportionate to the crimes committed and that adding conditions to the Licence would be more appropriate. She asked that the Sub-Committee take into consideration the financial impacts to the family as a suspension might cripple the business and the family. She reiterated the outcome of 'Prasannan v Royal Borough of Kensington' and that this Licence Holder was given a final chance. Ms Sherratt was aware that the Sub-Committee had to take action but did believe that the conditions offered were enforceable and Mr Patel was aware that in not adhering to any conditions imposed, he would risk up to a £20,000 fine or 6 months in prison.

### **The Determination**

The Sub-Committee considered the Review of the Premises Licence for Bargain Booze, Unit 11, Limehurst Square, which was called by Northamptonshire Police on the grounds of the Prevention of Crime & Disorder and the Protection of Children from harm.

The Sub-Committee heard and considered the representations from the Police and Ms Sherratt and had decided only to take into consideration the three under age sales and to give no consideration to the e-mail dated 20 March 2011.

Therefore, the Sub-Committee came to the conclusion that in order to promote and uphold the Licensing Objectives a sanction must be imposed, and the only viable course of action is to suspend the Premises License. The Suspension will be for a period of 5 weeks. Due to the seriousness of this matter, and the potential risk of harm to children, the Sub-Committee were very strongly considering the revocation of the Premises Licence.

Mr Patel was strongly recommended to use the suspension period to work with the Police and discuss solutions such as CCTV and where to locate them within the Premises. The Sub-Committee suggested that once the Premises had re-opened, that Mr Patel adheres to the conditions that had been put forward.

All parties have the right to appeal this decision to the Magistrates Courts if they feel that this is necessary within 21 days.

The meeting concluded at 5:05 pm

# Minute Item 1

18/05/2011 15:46:38

List Refused Sales Report

User: Dean Blackhurst Page 108

01/04/2010

177 177 JAYESHKUMAR PATEL

18/05/2011

Transaction	Event	Qty	Stock Code	Description	Value
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Type = 81 572  
 Comment Age Check Fail  
 Reason = 572  
 Type = 81 572

Date: 13/05/2011

Transaction No = 1924 Assistant No = 1 Till No = 1 Time 07:25

Refused Transaction	Sale	1	N691396	STERLING KS	105 20	3.00
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Reason = 300  
 Type = 81 300

Comment Age Check Fail

Reason = 300  
 Type = 81 300

### Assistant Summary

Assistant	1 Refused Sales	537 Total Sales	439850 22
Assistant	2 Refused Sales	360 Total Sales	1915 85
Assistant	3 Refused Sales	4 Total Sales	15 61

### Reasons Summary

ASKED FOR ID...NO ID	829 Total Sales	441434 82
ID INVALID	41 Total Sales	165 30
CUSTOMER IS BANNED	4 Total Sales	16 10
CUSTOMER IS UNDERAGE	5 Total Sales	19 30
CUSTOMER IS ABUSIVE	2 Total Sales	9 52
BUYING FOR UNDERAGE	3 Total Sales	13 68
UNDER THE INFLUENCE	1 Total Sales	5 30
	16 Total Sales	117 66