

NORTHAMPTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Friday, 7 June 2013

COUNCILLORS PRESENT: Councillors Conroy (Chair), Ford and Malpas.

OFFICERS: M Rahman – NBC Solicitor.
B Edwards – NBC Senior Licensing Officer

FOR THE APPLICANT: Sergeant M Worthington and PC D Bryan – Northamptonshire Police

FOR THE REPRESENTORS: Mr J Thind (respondent) and Mr P Burke (representative).

1. REVIEW OF BODY FUEL, 8 KINGSLEY PARK TERRACE, NORTHAMPTON NN2 7HG

The Chair welcomed everyone to the meeting.

The Senior Licensing Officer outlined the purpose of the hearing and explained that on 22 April 2013 an application was received for a review of the Premises Licence in respect of Body Fuel, 8 Kingsley Park Terrace, Northampton NN2 7HG. The application was submitted by Northamptonshire Police and related to two Test Purchases where underage persons were sold alcoholic drinks at the premises to be taken away for consumption.

Application for the Review

PC Bryan stated that the grounds for review were under the Licensing Objective of the Protection of Children from Harm.

He gave a brief history of the premises, indicating that Test Purchases had been carried out on 17 October 2010, 13 May 2011 and in July 2011. Alcohol had been sold to underage persons on two of those occasions. In addition, PC Bryan stated that on 4 May 2011 an underage youth had been dealt with by a PCSO and the youth had stated that the alcohol in his possession had been purchased from the premises. Penalty Notices had been served on the relevant member of staff in respect of the failed Test Purchases and had been paid. PC Bryan referred to these incidents as being relevant to the Licensing Objective under which the Review had been called as giving a holistic representation of the premises.

PC Bryan stated that further Test Purchases had taken place at the premises on 7 December 2012 and on 22 February 2013, in both of which alcohol had been sold to underage persons. On each occasion a Penalty Notice for Disorder for an offence under section 146 of the Licensing Act 2003 was served on the relevant member of staff and had been paid.

As the two failed Test Purchases were within three consecutive months of each other the premises fell within section 147a of the Licensing Act 2003 of persistently Selling Alcohol to Minors. Northamptonshire Police offered the Premises Licence Holders the option of accepting a section 169a(2) Closure Notice for Persistently Selling Alcohol to Children for a period of fourteen days as an alternative to prosecution. The Notice was accepted and served on 1 May 2013.

PC Bryan stated that Northamptonshire Police were concerned at the sales of alcohol to underage persons from the premises in 2010 and there had been four such sales since that time, and he wished the situation to be considered by the Sub-Committee.

Questions to the Applicant

In response to questions from the Sub Committee and the respondent's representative PC Bryan stated that:

- The premises had not been specifically targeted for Test Purchases. Test Purchases were carried out where information and intelligence indicated there might be an issue regarding the sale of alcohol to underage persons. Information was sought from local Police officers before deciding on undertaking test Purchases.
- A Test Purchase had been planned for the premises on 13 May 2011 before the incident with the PCSO and youth on 4 May 2011, although the incident had provided further information regarding the premises.
- The PCSO had spoken to staff at the premises following the incident on 4 May 2011 and a letter had been sent to the Premises Licence Holder. As far as PC Bryan was aware CCTV footage from the premises was not requested in relation to the alleged sale of alcohol to the underage person.
- All the sales of alcohol to underage persons had been made by members of staff who were not personal licence holders, which is why the Penalty Notices for Disorder had been issued in each case. The member of staff had been different on each occasion.
- PC Bryan apologised that the full date of the Test Purchase in July 2011 when alcohol had not been sold to underage persons had not been included in his statement. Having checked his papers he was unable to provide the full date to the Sub-Committee.

Representations by the Respondent

The respondent's representative stated that the Premises Licence Holder had been at the premises since 2004. His client was very apologetic that the premises had failed four test Purchases in four years and the staff concerned had been dismissed. Two members of staff had now been trained and would be applying for personal Licences so there would be a licenced person on the premises at all times the shop was open. The Premises Licence Holder had accepted the fourteen day closure resulting from the two failed Test Purchases within three consecutive months.

The Premises Licence Holder had been under some pressure following a divorce from his ex-wife in 2009 and subsequent threats then made to him. Whilst not being offered as an excuse for the failed test Purchases that did help to explain some of the pressures the Premises Licence Holder had been working under.

The respondent's representative stated that he had spoken to Police officers regarding additional conditions which could be added to the Premises Licence. He circulated a copy of the suggested conditions, as set out below, and read them to the Sub-Committee:

- A Personal Licence Holder to be at the premises at all times sale of alcohol takes place.
- CCTV:
 - To be installed to the specifications and in locations agreed with the Licensing Department at Northampton Police Station
 - To be recording at all times

- All images are to be available immediately on request by any of the responsible authorities
- All times and dates to be visible and accurate
- Images to be retained for a minimum of 31 days
- Sufficient staff should be trained in the use of equipment to ensure that there is at least one person on duty at all times who can operate the system and download images when required.
- Written training records are to be kept for all staff and these should be made available to any of the responsible Licensing Authorities upon reasonable request. Training should be conducted by a Personal Licence Holder or recognised training provider. Training should take place at regular intervals or whenever a training need is established, such as a change in legislation.
- These records will be kept for a minimum of 12 months and made available to Police on request.
- Refusals to be logged in a register. This is to be made available to any regulatory authority.
- The premise will operate the age verification scheme “Challenge 25” and will only accept the following forms of ID to be a current passport, driving licence photo card and PASS approved identification.
- Age verification scheme posters to be displayed on the premises.
- The Designated Premises Supervisor will undertake to complete the Personal Licence Holder Level 3 Course.

The respondent’s representative stated the Premises Licence Holder had agreed to complete the Level 3 Course and that a refusals register was already maintained at the premises.

Questions to the Respondent

In response to questions from the Sub Committee and the applicant the respondent and his representative stated that:

- Sales of alcohol currently made up 35-40% of the premises total sales.
- CCTV was already in operation at the premises and would be upgraded. The suggested conditions detailed how the CCTV footage would be kept.
- The premises Licence Holder had been in the premises, but upstairs, when one of the sales had been made. He was usually on the premises approximately eleven hours a day but had other business he went to as well.
- The current and previous refusals register were produced and the Premises Licence Holder stated that he had maintained a register since he first came to the premises in 2004.
- The opening hours of the premises were 7am to 11pm and the goods sold, in addition to alcohol, were sweets, confectionary, cigarettes, and there were facilities for the payment of utility bills.
- “Challenge 21” signage had been put up in the premises since the application for the Review had been made.
- The Premises Licences Holder had provided training, which he had designed, for his staff, including a package on age limits and age criteria. Staff asked for means of identification if a person wishing to buy alcohol appeared to be under the age of 21 or 25.
- Two members of staff at the premises had now received Personal Licence training and as soon as they received their certificate of completion would be applying for Personal Licences. The third Personal Licence Holder was the DPS himself.
- The Premises Licence Holder intended to take one day Level 3 Course within the

next two weeks.

PC Bryan was asked if he had seen the conditions suggested by the respondent's representative and he stated that he had not seen them before this meeting but the respondent had stated that he would be suggesting the conditions at this meeting. PC Bryan stated that he had no observations to make on the proposed conditions and considered them to be appropriate for the premises.

In answer to a question from the Sub-Committee PC Bryan stated that it was difficult to know if anti-social behaviour in the area had reduced whilst the premises were closed for two weeks in May 2013 as a result of the section 169a(2) Closure Notice as there were a number of other outlets in the vicinity which sold alcohol. In addition, the fair had been held on the adjacent Racecourse during this period.

Summing up by the Applicants

PC Bryan stated that the Police had concerns regarding the premises at the number of sales of alcohol to under age persons from the premise. As there had been four such sales the Police considered that the licence should be reviewed by the Sub-Committee. PC Bryan considered that the condition suggested by the respondent's representative were enforceable and could be monitored.

Summing up by the Respondent

The respondent's representative stated that the Premises Licence Holder had been at the premises for 9 years and was a part of the local community. He had always dismissed members of staff who had sold alcohol to under age persons. The Premises Licence Holder did not sell certain types of strong alcohol during the times the fair was on the racecourse to seek to prevent additional anti-social behaviour. The representative asked that these issues be taken into consideration.

The premises Licence Holder stated that he was genuinely sorry that sales of alcohol had been made to under age persons. These were as a result of errors and measures were now in place so the errors would not occur again.

There being no further questions, the Sub Committee adjourned at 10.38 am to make a decision. The Solicitor was called for advice.

The Sub-Committee returned at 11.15am.

The Determination

The Sub-Committee considered the Review of the Premises Licence for Body Fuel, 8 Kingsley Park Terrace, Northampton, which was called in by the Northamptonshire Police on the grounds of the Protection of Children from harm.

The Sub-Committee had considered the arguments raised by all parties, by hearing all representations from PC Dave Bryan of the Police and from Mr Patrick Burke on behalf of Mr Thind.

The primary issues that had been taken into consideration were the two under age sales within a period of two months, December 2012 and February 2013 and the previous underage sales had also been taken into account.

The Sub-Committee had not given any weight to the information provided with regards the

incidents on 4th May 2011 and 6th May 2011.

This was a very serious matter, and there was a serious potential for risk of harm to children which this authority does not take lightly.

The Sub-Committee had also taken note that the Premises Licence Holder was cautioned for the offence of persistently selling alcohol to minors and that he accepted a s169A Closure Notice and was refrained from selling alcohol for a period of 14 days.

However, this authority has a duty to ensure the Licensing objectives are upheld and promoted, with 4 failed test purchases within a 2 and half year period, the Sub-Committee were seriously considering revoking the Premises Licence.

However, given the steps taken by Mr Thind the Sub-Committee have made the decision that it is appropriate to suspend the Premises Licence for a period of 28 days and modify the premises licence to include all the conditions proposed by Mr Thind as handed to the Sub Committee at the hearing.

The Sub-Committee felt these are appropriate sanctions, and during the suspension period, it allows enough time for Mr Thind to get his house in order, such as allowing the members of staff who have completed the Personal Licence Course to obtain their Personal Licences and also allows Mr Thind to complete the Personal Licence Holders' Course to Level 3.

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 11:18 am.