

NORTHAMPTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 14 July 2016

COUNCILLORS PRESENT: Councillors Ansell, Beardsworth and Walker

OFFICERS: Louise Faulkner (Senior Licensing Officer)
Mebs Kassam (Solicitor)

FOR THE APPLICANT: PC Chris Stevens (Northamptonshire Police)

FOR THE REPRESENTORS: Mr Sufan
Mr Islam **Error! No document variable supplied.**

1. WELCOMES

The Chair welcomed everyone to the Sub Committee.

2. DECLARATIONS OF INTEREST

There were none.

3. PREMISES LICENCE REVIEW - STAR OF INDIA

The Senior Licensing Officer explained that on the 24th May 2016 Northampton Borough Council had received an application under S51 of the Licensing Act 2003 from Northamptonshire Police for the review of the premises licence number PL0325, Star of India 5-7 Abington Avenue.

The application for the review had been submitted on the grounds of one of the four Licensing Objectives: namely the prevention of crime and disorder.

The Applicant:

PC Stevens, Northamptonshire Police, explained that 2 males had been found to be working illegally at the premises; a third male had been found to have no evidence of the fact he had Indefinite Leave to Remain in the UK and could not have provided his employer with such documentation. The premises had been issued with fines by the Immigration Department in relation to the illegal workers. It was further noted that a test purchase had been carried out during which a customer had been purchased an alcoholic drink, to drink whilst waiting for a takeaway order, which was not permitted as a license condition prevented them for selling alcohol to people other than with table meals purchased at the premises. It was reported that this activity had been witnessed on numerous occasions. The Police were therefore asking for the license to be revoked on the grounds that the premises had made inadequate checks regarding worker status and the breach of licence conditions. It was stated that; the alcohol license was not the primary income to the business.

In response to questions asked, PC Stevens stated that the Police were looking for an application for an amendment to the condition on the license regarding the sale of alcohol if the committee decided not to revoke the licence.. Concern was expressed by the Sub Committee at the frequency and regularity in which alcohol had been sold contrary to the conditions on their license. Members questioned the impact that illegal working had on both those employed illegally and on the local economy and PC Stevens explained the holistic approach that the Police were taking and the promotion of the licensing objectives

The Respondent:

Mr Sufan, the Premises License Holder's brother and Premises Manager, apologised unreservedly and explained that the premises had been run in Northampton for over 50 years and stated that the immigration issue was still ongoing. He explained that since the application for the review had been submitted, they had implemented much stricter checks when employing staff and had followed the guidance issued from Gov.uk but that it was difficult in some instances to determine whether paperwork and documentation submitted by staff was counterfeit/forged. He commented that staff, through a lack of training and understanding had served alcohol not in accordance with their licence but reported that since the staff had been better trained and signs had been put up around the premises advising customers that they were not able to buy alcohol, unless it was in accordance with their license.

In response to questions asked, Mr Sufan reported that they did pay their staff cash in hand and more than what was stated in the report, and commented that they had a record of payroll transactions and tax paid. He further noted that all the information that they had gathered with regards to the illegal employment of migrants had been collected from the Gov.uk website and whilst it was necessary and their responsibility, reiterated that they were not to know if documentation was fake as they had taken it at face value. Mr Islam, the License Holder commented that he had informed staff of the conditions on his license with regards to the sale of alcohol but sometimes staff were left unsupervised when he was needed elsewhere or frequenting the toilet. PC Stevens stated that since the original incident on the 23rd May 2016, alcohol had been served to customers again, in contravention of the licensing conditions and no signs had been evident at the premises. Mr Islam stated that they had trained staff and put up signs and notice but that with a high turnover of staff, and the language barriers experienced when recruiting Eastern Europeans had resulted in a less than clear understanding of the conditions.

Mr Sufan confirmed that they did not operate past 11pm and therefore did need a late night refreshment licence.

Summing up by the Applicant

PC Stevens explained that both the illegal workers in employment and the breach of the premises licence were very serious matters and voiced his concern at the Management of the premises; the attitude of management being very laissez faire. The licence holder had been warned by letter but had still continued to breach the licence conditions. He also stated that checking a passport was the same as checking a right to work status. He further noted that the removal of the Designated Premises Supervisor would necessarily solve the problems and that revocation of the license would be more appropriate in the circumstances. Clarifying for the Solicitor. PC Stevens explained that it would be suitable to revoke the license, even with a license to serve late night refreshments

Summing up by the Respondents

Mr Sufan explained that if their license was to be revoked or suspended, the restaurant would not be able to survive as the revenue from alcohol was more than that received from food sales. He further noted that they had been serving their customers for over 52 years and they wished to continue to do so. The immigration issue had not been totally their fault, he added, as they had been forged documents.

The Sub Committee retired to deliberate at 10.44am. The Solicitor was called for advice.

The Sub Committee reconvened at 11.47am.

DECISION:

The Chair thanked everyone for attending the Licensing Sub - Committee to consider the review of the premises licence for the Star of India, 5-7 Abington Avenue, Northampton, NN1 4QL.

The review was called by a responsible authority namely the Police under the Licensing objectives of the Prevention of Crime and Disorder under Section 51 Licensing Act 2003

The Sub Committee carefully considered the application, representations from the Police, the representative for the premises licence holder and the premises licence holder himself

The Sub Committee have therefore decided unanimously that on a balance of probability the current operation of the premises was not promoting the Licensing objective of the prevention of Crime and Disorder

Therefore it was considered by the Sub Committee that the following were appropriate and proportionate under section 52 Licensing Act 2003

- 1) To revoke the premises licence

The Sub Committee received legal advice in terms of:

- 1) the licensing objectives
- 2) the legal test to be applied
- 3) the options available to the committee
- 4) section 182 guidance
- 5) the case law of east Lindsey v Abu Hanif [2016]

the reasons for the decision were as follows:

- 1) the committee were of the view that inadequate checks were made to ensure that those detained by immigration enforcement were entitled to work in the UK
- 2) illegal working has harmful social and economic effects on the UK
- 3) insufficient evidence had been produced at the hearing that the workers were being paid the minimum wage
- 4) employing illegal workers defrauds the HMRC
- 5) the status of Ruhul Amin Khan could have been investigated further by the premises by seeking production of his passport instead of relying only on the Italian ID card which was subsequently found to be a false instrument

- 6) placing appropriate weight to paragraph 11:27 and 11:28 of the section 182 guidance whereby employing illegal workers should be looked at particularly seriously.
- 7) the decision is in the interests of the wider community
- 8) there being a lack of training in relation to the licensing act with regards to employed staff

Any persons aggrieved by this decision have the right of appeal to the magistrates court no later than 21 days from the date of receiving the decision notice.

COUNCILLORS PRESENT: Councillors Ansell (Chair) Councillors Beardsworth and Walker

OFFICERS: Louise Faulkner (Senior Licensing Officer)
Mebs Kassam (Solicitor)

FOR THE APPLICANT: Mr Anthony Close
Mr Barez Ali

FOR THE REPRESENTORS: Mr Stephen Mark (Public Health, Northamptonshire County Council)

4. NEW GRANT PREMISES LICENCE - 137 KETTERING RD

The Senior Licensing Officer reported that on 19th May 2016 Northampton Borough Council received an application for the new grant of a Premises Licence in respect of a convenience store at 137 Kettering Road, Northampton.

It was noted that the application was submitted by AC Consultancy, agent for the applicant Barez Ali. The application was to request a Premises Licence for the off sales of alcohol between the hours of 08:00am until Midnight Monday – Sunday with the same opening/closing times. The applicant had agreed a revised operating schedule with the Police agreeing to reduced opening and the off sales of alcohol hours from midnight to 11:00pm and conditions on the licence. Copies of the amendments are detailed on pages 45-48 of the agenda. An objection to the application has been received from Northamptonshire County Council Public Health team and an interested party from Scrooge. The Public Health team proposed a number of conditions and some of these had been agreed as detailed on page 51 of the agenda.

Applicant:

The agent Mr Anthony Close of AC Consultancy explained on behalf of the application, Mr Barez Ali that all of the statutory requirements had been complied with and that 2 representations had been received. He stated that 3 of the 5 conditions offered by Public Health had been accepted; the one not accepted being the sale of individual cans of alcohol which was subsequently withdrawn by Public Health at the hearing.

Therefore, there was one unresolved condition which was proposed by Public Health which was not agreed to by the applicant, namely the issue of advertising on the premises.

In response to questions asked, Mr Close explained that the opening hours (8am to 11pm) were standard opening hours and that the 8am open was to accommodate the needs of shift workers. He also stated that his client would not be serving street drinkers or would allow street drinkers to congregate outside his shop. He further noted that PC Stevens, on behalf of Northamptonshire Police had raised no objections to the application. He referred to comments made relating to street drinking and noted that this was not a problem that was exclusive to Northampton but this was a national problems, the enforcement of which was down to the Police and other Responsible Authorities and should not be a considered as part of the application. The Solicitor stated that the Sub Committee were given consideration to the application holistically as the area where the application was being made, had quite a high proportion of Off Licences. Mr Close explained that the shop would cater specifically for the Romanian Community selling Romanian produce and maintained that his client would

want the permitted license from 8am.

Responsible Authority

Mr Stephen Mark representing the Public Health Authority on behalf of Northamptonshire County Council explained that when an application was received they were able to enter information into a matrix system which identified areas of concern. He explained that the availability of alcohol contributed to alcohol related harm and noted that whilst the Authority accepted the proposed conditions, they would like there to be '*no window display posters of similar adverts containing any reference to alcohol on the premises shop frontage or highway abutting the premises*'. In response to a question asked by the Solicitor, Mr Marks reported that they were not objecting to the new grant application, but would like an added condition with regards to the advertising and that it was for the committee to make a decision

Summing Up

Mr Close stated that the application met all the statutory requirements and noted that his client had done everything to appease the Sub Committee and the concerns of the Responsible Authorities. He noted that the shop had previously been empty which had added little value to the area and that this would be an independent shop primarily selling Romanian produce to the Romanian community.

Mr Marks had no further comments.

The Sub Committee retired to deliberate at 1.13pm. The Solicitor was called for advice.

The Sub Committee reconvened at 2.03pm

DECISION

The Chair thanked everyone for attending the Licensing Sub Committee to consider the application for a new grant for the convenience store , 137 Kettering Road, Northampton, NN1 4BS pursuant to Section 17 Licensing Act 2003

The Sub Committee carefully considered the application, representations from public health, the representative for the premises licence applicant and the premises licence applicant himself

It was noted that the police did have discussions with the applicant and the hours were amended from the original application to a 23:00 close

The Sub Committee therefore decided unanimously to grant the application subject to the revised operating schedule and mandatory conditions and the following conditions mentioned below:

The committee have also decided to allow the supply of alcohol as follows:

Monday to Sunday - 11 am to 11pm

Conditions on the licence:

- 1) no beer, lager or cider over 7% abv to be sold

- 2) a challenge 25 scheme is adopted
- 3) any alcohol guidelines/information multilingual material to be displayed near or on shelves / displays of alcohol
- 4) there be no marketing on window displays of alcohol at the premises which exceeds 10% of the total front window area of the premises
- 5) there be no advertising of alcohol on the front door window of the premises

The Sub Committee received legal advice in terms of:

- 6) the licensing objectives
- 7) the legal test to be applied
- 8) the options available to the committee
- 9) section 182 guidance

The reasons for the decision were as follows:

- 1) the amendment to the hours for the supply of alcohol is considered appropriate and proportionate considering the location of the premises which is in the top 10% for alcohol harm
- 2) the conditions added to the licence were agreed by the applicant prior to the hearing or at the hearing
- 3) the police had agreed to the amendment of the application
- 4) public health and the applicant had agreed at the hearing to condition 4 & 5 above

Any persons aggrieved by this decision has the right of appeal to the magistrates court no later than 21 days from the date of receiving the decision notice

The meeting concluded at 2.08pm