

# NORTHAMPTON BOROUGH COUNCIL

## LICENSING SUB-COMMITTEE

Monday, 25 September 2017

**COUNCILLORS PRESENT:** Councillors Ansell (Chair), Councillors Culbard and Haque

**OFFICERS:** James Chadwick (Senior Litigation Solicitor)  
Eleanor Flannery (Licensing Enforcement Officer)  
Ed Bostock (Democratic Services Officer)

**FOR THE APPLICANT:** PC Chris Stevens (Northamptonshire Police)  
Louise Faulkner (Licensing Team Leader)

**FOR THE REPRESENTORS:** Duncan Craig (Solicitor, representing)

### 1. WELCOMES

The Chair welcomed everybody to the subcommittee.

### 2. DECLARATIONS OF INTEREST

There were none.

### 3. PREMISES LICENCE REVIEW - FAR COTTON FOOD & WINE, 119 ST LEONARDS ROAD

The Licensing Enforcement Officer outlined the circumstances as set out in the report. The sub-committee heard that on 10<sup>th</sup> August 2017, an application was received from Northamptonshire Police to review the Premises Licence for Far Cotton Food & Wine under the Licensing Objective “the prevention of crime & disorder”.

#### Representations by the applicant:

PC Stevens addressed the sub-committee and informed Members that the conditions imposed by a previous subcommittee in April 2016 had not been adhered to. He advised that during a check of the premises, a colleague investigating an unrelated crime had been informed that CCTV footage could only be obtained for the previous 4 days. This complaint was brought to PC Stevens who, when visiting the premises with a Licensing Officer on 16<sup>th</sup> June 2017, found a male to the rear of the shop in a storage area; he provided a UK Border Agency ID card which showed he was prohibited from working in the UK. Following checks on the male that revealed he was liable for arrest and removal from the country, he was placed under arrest.

Louise Faulkner then confirmed the evidence in her statement and that four attempts had been made to obtain the CCTV footage from the premises.

PC Stevens then drew Members’ attention to a statement from an Immigration Officer familiar with the case. The letter stated that the male in question was prohibited from taking employment in the UK, and that checks were not made on the employers help line service.

The sub-committee were then shown a piece of CCTV footage of the male making a sale of alcohol on the premises. A staff member left the shop and shortly afterwards, the male processed a cash payment through the till. Members were asked to note that the male seemed comfortable with using the till and how to process the sale. When the staff member returned, he did not seem concerned about the male standing behind the counter.

PC Stevens explained that given the circumstances mentioned, it was the position of the Police that on a balance of probability, the male was working at the shop illegally. He further stated that it was the Police's position that the licence holder was aware of the male as two of his previous listed addresses had been with the licence holder and his brother.

The sub-committee heard that paragraphs 11.26, 11.27 and 11.28 of the Section 182 Guidance had been consulted when making the application. It was pointed out that paragraph 11.28 made clear that revocation of a licence should be considered in the first instance and this was the 2<sup>nd</sup> in less than 2 years, so a revocation of the premises licence was proportionate since the licence holder seemed not to have learnt from the past.

### **Representations by the respondent:**

Duncan Craig, the solicitor representing the licence holder, addressed the sub-committee and explained that the male in question was the licence holder's relative; he had lived in Wembley until he was hospitalised. Whilst in hospital, he received a visit from an Immigration Officer which resulted in no action being taken. It was also noted that he had significant learning difficulties and that his family had felt an obligation to take him in. Mr Craig noted that hiding in the storage area on the date of the visit by Police and Licensing Officers was indicative of unusual behaviour. He further noted that due to his learning difficulty, the male was not suitable for employment; that he was behind the counter and had served a customer was beyond doubt but he was not employed in any way.

It was perfectly reasonable, Mr Craig stated, to assume that the male was permitted to live and work in the UK, since his dealing with Immigration whilst in Wembley had not escalated. He asked the sub-committee to take into consideration that the licence holder was not in the country at the time. The issue surrounding the CCTV equipment had been identified on 8<sup>th</sup> June and steps to resolve it were taken before he left, prior to any visits by Police or Licensing Officers, and that all software problems had been successfully resolved. Mr Craig stated that due to differences between the two Premises Licence reviews, a revocation of the licence would be unfair, inappropriate and disproportionate.

In response to questions, the sub-committee heard that the premises' CCTV system was 1½ years old; the software issues surrounding it had been resolved 4 days before the Police and Licensing Officers visited, which was why there was only 4 days' worth of footage available; sales receipts were circulated to evidence this. It was explained that the licence holder had very limited control over the situation whilst out of the country; he recognised that mistakes had been made by himself and his staff but they were unusual circumstances that would not repeat themselves. It was noted that the Designated Premises Supervisor (DPS) was not always on-site but that the rest of the staff were sufficiently trained to deal with any problems in the absence of him or the licence holder.

### **Summing up by the respondent:**

Mr Craig stated that any actions taken had to be proportionate to the level of non-compliance; the sub-committee had many powers to invoke and although it would be tempting, in seemingly similar cases, to come down hard on the licence holder, they were very different circumstances and he had done all that he reasonably could whilst out of the country. He asked that the sub-committee take no action.

### **Summing up by the applicant:**

In summing up, PC Stevens stated that this was the 2<sup>nd</sup> instance in 18 months of an illegal worker being employed on the premises. He noted that as a result of poor management, the sub-committee resolved to remove the DPS from the premises in April 2016 and the

problem persisted. He stated that the evidence he had shown clearly demonstrated the male working on the premises and as far as the Police were concerned, revocation of the premises licence was the only proportionate action to be taken.

The subcommittee retired at 11:20 to make a decision.

The meeting reconvened at 13:15.

## **RESOLVED:**

The Licensing Sub-Committee has carefully considered the following;

- The review application received from Northamptonshire Police.
- Oral representations on behalf of the Police from PC Stevens and CCTV footage of 16<sup>th</sup> June 2017.
- Representations from the premises licence holder's legal representative.
- Staff check list and refusals register submitted by the Premises Licence Holder as well as statements of Donald Bailey and Rames Ramaalingham
- The witness statements of Louise Faulkner and Andrew Watson.
- A letter from Immigration Officer Shahid Hussain dated 7<sup>th</sup> August 2017.

The sub-committee have decided to revoke the premises licence for Far Cotton Food and Wine ("the Premises") after concluding that, on the balance of probabilities, the premises did not promote the licensing objective of preventing crime and disorder by

- i) allowing a person with no right to work in the UK to work at the premises and
- ii) by failing to comply with a condition on the premises licence requiring a person conversant with the operation and downloading of the CCTV to be on the premises at all times when it is open to the public.

Revocation of the premises licence is appropriate and proportionate in the circumstances in order to promote the crime and disorder licensing objective.

The sub-committee received legal advice in terms of

1. The four licensing objectives, specifically the prevention of crime and disorder.
2. The legal test to be applied.
3. The options available under section 51 (4) of the Licensing Act 2003.
4. Section 182 guidance, specifically paragraphs 11.20, 11.21, 11.22, 11.27 and 11.28.
5. NBC Statement of Licensing Policy 2016 - 2021
6. The case of East Lindsay District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway) [2016] EWHC 1265 (Admin)

The reasons for the decision are as follows;

- The sub-committee accepted on the balance of probabilities that Krishnardoban Panchalingham was working at the Premises on 16<sup>th</sup> June 2017. They gave great weight to the witness evidence of Louise Faulkner and Andrew Watson as well as the representations of PC Chris Stevens and the CCTV footage from 16<sup>th</sup> June 2017, taking into account that the Premises Licence Holder had previously been found to have employed a person with no right to work in UK.
- The sub-committee noted that no medical evidence was presented about Krishnardoban Panchalingham, despite being told that he had learning difficulties that would have prevented him working at the premises. The sub-committee noted from

the CCTV footage from 16<sup>th</sup> June 2017 that Mr Panchalingham appeared to be competent when serving a customer.

- They also accepted that on the balance of probabilities that the Premises Licence Holder or any person managing the premises on his behalf did know or at the very least ought to have known that Mr Panchalingham had no right to work in the UK.
- The sub-committee believe that this is indicative of poor management practice on behalf of the Premises Licence Holder.
- They believe that the issue of CCTV was not deliberate on evidence presented to them but is indicative of poor management practice. They also noted that it took 4 attempts to get the CCTV evidence, notwithstanding that only 4 days' worth of footage was available.
- The previous DPS was removed at a licensing review in April 2016 because a person with no right to work in the UK was found working at the Premises. The same thing has happened just over one year later at the same Premises with a new DPS. The Committee therefore believe that the Premises Licence Holder has failed in his obligation to prevent crime and disorder. They also heard that there had been minimal involvement with the premises by the Designated Premises Supervisor in order to ensure that the licensing objectives are upheld in the absence of the Premises Licence Holder. The sub- committee believe that this once again indicated poor management practice at the premises.
- The sub-committee believe it would not be appropriate or proportionate in relation to the harm to public safety by failing to uphold the licensing objective of preventing crime and disorder by
  - i) taking no action in respect of the Premises Licence;
  - ii) adding or modifying conditions on the licence;
  - iii) suspending the licence for a period of no more than three months;
  - iv) excluding a licensable activity from the licence or;
  - v) removing another Designated Premises Supervisor, as per 11.23 of the section 182 guidance.
- The sub-committee believe it is appropriate and proportionate in this particular case to revoke the premises licence in response to the poor management practices which have occurred at the premises and which can be attributed to the Premises Licence Holder.

Any person aggrieved by this decision has a right of appeal to the Magistrates Court no later than 21 days from the date of being notified of this decision in writing. This decision will not take effect until the 21 day period expires.

The meeting concluded at 1:17 pm