

NORTHAMPTON BOROUGH COUNCIL

ALCOHOL & GAMBLING LICENSING SUB-COMMITTEE

Thursday, 6 December 2018

PRESENT: Councillor Sargeant (Chair); Councillors Beardsworth and Walker

OFFICERS: Eleanor Flannery (Licensing Enforcement Officer), Clive Tobin (Litigation & Licensing Solicitor), Ed Bostock (Democratic Services Officer)

FOR THE

APPLICANT: PC Chris Stevens (Northamptonshire Police)

FOR THE PREMISES

LICENCE HOLDER: Amirthalingham Krishnakumar (Premises Licence Holder)
Frank Fender (Licensing Consultant)

1. WELCOMES

The Chair welcomed everyone to the meeting

2. DECLARATIONS OF INTEREST

There were none.

3. REVIEW OF PREMISES LICENCE - FAIRFIELD NEWS, 17 FAIRFIELD ROAD

The Licensing Enforcement Officer outlined the procedure for the hearing.

Representations by the applicant:

PC Chris Stevens elaborated upon the report and explained that an illegal worker was found inside the premises on 4th October 2018, during a visit regarding a separate matter. He stated that as he entered the shop and was greeted by the owner, the illegal worker had stated to walk towards the stock room at the back of the shop and go downstairs. PC Stevens noted this behaviour and asked the man to return and to provide identification. He left to get it and returned several minutes later, empty-handed, stating that the door to his flat was locked. PC Stevens asked the worker for his details and they were written down for him, by the shop owner, after having to ask him for his name and his address.

At this point PC Stevens asked Members to question why the shop owner had to ask his worker for details that he should have already been privy to.

The worker was subsequently arrested and taken into custody where he provided a second set of details. It later transpired that the 2 sets of details were false and that the worker was in fact an over stayer with no right to work in the UK, which PC Stevens stated raised the same question around the shop owner's role in writing down false details.

PC Stevens advised that CCTV footage from the premises clearly showed the man working behind the counter serving customers as well as stocking shelves, and suggested that this evidence was most likely the reason that the representor would not be disputing the fact that an illegal worker was employed at the premises.

Members were informed that according to Section 182 Guidance, revocation of a licence

should be seriously considered even in the first instance where illegal working was found, although they might take into account the fact that the premises had not come to the attention of the Licensing Committee by way of a review, and choose to suspend the licence, or attach conditions to it instead. It was the position of the Police that any of these options would serve as a strong message to other businesses that these practices would not be tolerated.

Representations by the respondent:

Mr Fender, representing, explained that the owner had made a genuine mistake; since the worker had an entry visa and was in the country legally, he believed he was also entitled to work. The owner was now fully aware of how robust checks should have been and had been very proactive following the incident; he currently employed 2 foreign students who were entitled to work in the UK, Home Office checks confirmed this.

Mr Fender stated that any remedial actions should address the cause, and be appropriate and proportionate and advised that the only appropriate action to take in this situation would be to modify the licence's existing conditions. He further stated that suspension of the licence would be disproportionate and implored Members to attach conditions and should they be minded to suspend the licence, that they do so for the shortest possible time.

In response to questions, the Sub-Committee heard that the worker was not a relation of the shop owner or previously known to him, that he came in off the street and asked for a job, and that he had lived in the flat above the premises. They further heard that there had been no fines issued by the Home Office in relation to the illegal worker.

The Solicitor advised that whilst any action must be proportionate, suspension of the licence would be a legitimate sanction addressing the cause for the review, and not a disproportionate punishment. He further noted that a licence was considered a belonging under the Human Rights Act.

Members retired at 10:37 to make a decision.

The meeting reconvened at 11:00.

RESOLVED:

The Licensing Sub-committee carefully **considered** the following:

- The application received from PC Stevens;
- The written report prepared by Eleanor Flannery, Senior Licensing Enforcement Officer;
- The oral representations made by PC Stevens;
- The oral representations made by Frank Fender, Licensing Consultant, on behalf of the premises licence holder for the premises, Mr. Amirthalingham Krishnakumar; and,
- The Guidance issued under the Licensing Act 2003.

The application stated that on 4 October 2018 a visit was made to the premises by Trading Standards Officers and Police in relation to an unrelated matter. At that time a person was found in the premises who had no right to work in the UK. PC Stevens stated that this person initially left the shop to obtain his identification documents however, he returned a short time later stating that the door was locked. PC Stevens initially believed that the worker had meant the door to the flat above the licensed premises however, it later became

apparent that he meant the exit door to the premises and that he may have been attempting to abscond. The worker then gave two false names and was arrested, following which his real name was established. The premises licence holder did not dispute that this person was working in the premises.

PC Stevens referred to the case of *Bassetlaw District Council v Worksop Magistrates Court* which stated that a decision in relation to a review could contain an element of deterrence.

Mr Fender stated that the premises licence holder accepted the breach occurred. He had however, since that time, taken steps to ensure that the identity of all workers is properly checked. He follows the Home Office Guidance and has also taken advice on the issue. The shop's other employees are family members who have the right to work in the UK, a nephew who has indefinite leave to remain, and two students who are foreign nationals but have the right to work during term time.

Mr Fender stated that the premises were fully compliant in all other respects and that in over 8 years as owner of the business and licence holder he had not had any other problems and no action had been taken against him by responsible authorities. He also stated that the premises licence holder agreed that some conditions drafted by the police should be added to the licence if the Sub-committee think fit. He stated that since the breach has been admitted by the premises licence holder the issue for the Sub-committee is what action is appropriate in the circumstances.

Mr Fender referred to the Guidance issued under the 2003 Act, in particular paragraph 11.20 which states that action should be aimed at the cause of the concerns raised in a review application.

The Sub-committee received **legal advice** as follows:

1. The licence holder accepts the failings in relation to employment of a person who no longer had a legal right to work in the UK and there is therefore little by way of factual issues to determine.
2. The case of *Bassetlaw District Council v Worksop Magistrates Court 2008* held that a decision on a review of a premises licence could have an element of deterrence, but not punishment for any breaches.
3. The options legally available to the Sub-committee are set out in paragraph 6.1 of the report.
4. Paragraphs 11.16 to 11.28 of the Statutory Guidance are relevant to review applications and members should consider other aspects of that guidance in addition to paragraph 11.20 quoted by Mr. Fender.
5. That a Premises Licence is regarded as a possession for the purposes of the Human Rights Act. Any action therefore had to be both appropriate for the promotion of the licensing objectives and proportionate under that Act.
6. Any action taken should be the minimum required to promote the licensing objectives.

The Sub-committee **considered** paragraphs 11.16 to 11.28 of the Guidance however, they had particular regard to:

- (a) Paragraph 11.20 which states that; in deciding which of these powers to invoke, it is expected that licensing authorities should *so far as possible* seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should *generally* be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of

concern that instigated the review

- (b) Paragraph 11.27 which states that; There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises ... for the employment of a person who is disqualified from that work by reason of their immigration status in the UK.
- (c) Paragraph 11.28 which states that; it is envisaged that licensing authorities, the police, responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

The Sub-committee made the following **findings** of fact:

- (a) That, as agreed by the parties, an illegal worker was found in the premises when police and Trading Standards Officers visited in October this year.
- (b) That the worker was initially legally in the UK and had a right to work however, his visa expired and he became an over-stayer meaning his right to work ended.
- (c) That there were no other illegal workers found in the premises at that time or since the visit.
- (d) That the premises licence holder has held the premises for 8 years and this is the first time that an application for a review has been made.

The Sub-committee **considered the options open to it** under the Act and the extent to which they were appropriate to address the issues leading to the review. The Sub-committee **Resolved:**

- A. The premises licence for Fairfield News, Fairfield Road, Northampton is **suspended for a period of six (6) weeks**.
- B. The conditions proposed by the Police and accepted by the premises licence holder are added to the licence.

The **reasons** for the Sub-committee's decision are as follows:

1. This is the first review of the premises licence in the 8 years that Mr. Krishnakumar has held the licence.
2. Mr. Krishnakumar has, since the incident, taken steps to ensure that all workers have the right to work in the UK and no other instances of illegal workers has occurred at the premises.
3. The employment of illegal workers is a serious concern however, it is accepted that the worker concerned was initially lawfully employed and this did not begin as the deliberate employment of someone without the right to work in the UK. That said employment of illegal workers in licensed premises within Northampton is widespread and a message should be sent out to the premises licence holder (and others) that firm action will be taken when such activities result in the review of a premises licence.
4. The Sub-committee has considered its duty to the wider public to act in their interests to promote the licensing objectives and considers that, on this occasion due to the mitigating factors above, this can be effectively achieved by suspending the licence

for a period of six (6) weeks and adding the conditions agreed between the parties.

The Applicant or the premises licence holder may appeal against this decision to a magistrates court within 21 days of the date this decision is served on them.

The meeting concluded at 11:05 am