

# NORTHAMPTON BOROUGH COUNCIL

## LICENSING SUB-COMMITTEE

**Monday, 8 January 2018**

**COUNCILLORS PRESENT:** Councillors Sargeant (Chair), Culbard and Walker

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

**FOR THE APPLICANT:** Sergeant Martin O'Connell (Northamptonshire Police)

**FOR THE REPRESENTORS:** Patrick Burke (PMB Licensing)

### **1. WELCOMES**

The Chair welcomed everyone to the meeting.

### **2. DECLARATIONS OF INTEREST**

There were none.

### **3. REVIEW OF PREMISES LICENCE**

The Licensing Enforcement Officer outlined the procedure for the hearing.

#### **Representations by the applicant:**

Sergeant Martin O'Connell explained to Members that on 19<sup>th</sup> October at 18:25 an incident occurred at Nene Valley Stores. The assailant, a man who appeared to be working at the shop, followed 2 men from the store after a brief altercation inside and attacked 1 of them with a length of wood that he had retrieved from behind the till. It was noted that prior to this, the man had retrieved a hammer from the same place but exchanged it for the wooden baton before attacking. The Police were alerted to the incident after a call from a member of the public. On arrival the assailant was found mopping up the victim's blood and the victim was later found at Super Sausage, further along the road. The assailant, who falsely identified himself at the time, was later identified as Chandrakasan Chandrasegaran, a male known to Immigration Services with no right to work in the UK.

Sergeant O'Connell stated that this incident raised 3 issues; there was no reason for Mr Chandrasegaran to follow the men from the store after they left, items that could easily be used as weapons should not have been kept within such easy reach of the till, and a man with no right to work in the UK should not have been working at the shop. He explained that these issues clearly showed that the licensing objectives were not being upheld. He added that even though there was enough evidence to charge the worker with grievous bodily harm, the victim had since made himself scarce so a prosecution seemed unlikely.

In response to questions, Members heard that there was no way to discern the reason for the incident beginning since there was no audio with the CCTV footage, however, a window was broken whilst the 2 men were inside the shop. It was explained that the Police had interviewed the assailant and that he had since appealed his failed asylum decision.

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

Patrick Burke, representing the licence holder, stated that his client had held the licence for

Nene Valley Stores for 18 months without incident. He also ran another shop in Northampton. On the night of the incident it was explained that Mr Chandrasegaran, who was a friend of a friend, had been staying in the property above the shop for a number of days. He had been asked by the licence holder to close the shop whilst he left to collect his car. He did not, which resulted in the 2 men, both inebriated, entering the shop and the incident taking place. Mr Burke explained that the hammer and wooden baton were left on the shop floor following recent DIY works. He reported that his client was happy to accept the 4 Conditions recommended by the Police and that he had packs that he would pass onto his client to provide staff with additional training. Mr Burke confirmed that the shop window had been broken during the altercation.

In response to questions, Members were told that the shop was run as a family business, the licence holder's wife working there as well as 2 part-time staff members. It was also explained that the assailant's familiarity with the shop and ease in locating the items used as weapons was due to him having spent a number of days there and the hammer and wooden baton being very visible from behind the till. The licence holder did not expect Mr Chandrasegaran to have to deal with any customers as he should have locked the shop doors.

The Solicitor advised that in addition to the options listed in the report, Members had the choice of removing the DPS or modifying the existing licence Conditions. He reported that some changes to the Licensing Act 2003 were meant to deal specifically with illegal workers in the UK and that these changes should also be taken into consideration.

Members retired at 10:34 to make a decision.

The Members returned at 11:11.

## **RESOLVED:**

The Licensing Sub-Committee carefully considered the following:

- The application received from Northamptonshire Police ("the Police").
- Oral representations from Sgt O'Connell, Northamptonshire Police.
- Oral representations from Mr. Patrick Burke of PMB Licensing on behalf of the Premises. Licence Holder, Mr. Sathasivam Mahinthan.

The sub-committee decided to:

- Add conditions to the licence as suggested in the application by the Police; and,
- Suspend the premises licence for a period of two (2) months.

The sub-committee received legal advice in relation to:

1. The options available under section 52(4) of the Licensing Act 2003 ("the 2003 Act");
2. The legal test to be applied;
3. The Guidance issued under section 182 of the 2003 Act;
4. That the decision should be proportionate and only the minimum steps taken which are appropriate to deal with the issues;
5. That the 2003 Act had been amended recently to contain express prohibitions in relation to those who were not entitled to work in the UK due to their immigration status;
6. The case of R (Bassetlaw DC) v Worksop Magistrates Court (2008) in which it was

decided that when taking steps in review proceedings involving crime and disorder a licensing authority could consider 'deterrence' as part of their decision making process.

The reasons for the decision are as follows:

- a. The Sub-committee were satisfied that the incident took place on 19 October 2017 as set out in the Police application and the Sub-committee report. This resulted in a serious injury being caused to a member of the public when a person on the premises followed two people from the premises into the street and attacked one of them with a wooden baton.
- b. The Sub-committee found that there was some provocation in relation to the incident however, they also found that there was an entirely inappropriate reaction by the person present in the premises.
- c. The Sub-committee found that the events were caused as a result of the Premises Licence Holder having left a person in charge of the premises who did not have the appropriate training or supervision.
- d. The Sub-committee found that the Premises Licence Holder either:
  - i. employed the person concerned at the premises when he was not entitled to work in the UK due to his immigration status; or,
  - ii. chose to leave a person who he barely knew in charge of the premises.

The fact that the person concerned was able to quickly locate a hammer and then quickly swap this for a wooden baton showed a familiarity with the premises which suggested that the person was more than a mere visitor.

- e. In either case, the Premises Licence Holder left a person who did not have appropriate training in charge of the premises, in which alcohol and other age restricted products were present. The incident occurred during normal trading hours when the premises were clearly open, the door unlocked and the lights left on. This amounted to fault by the Premises Licence Holder and the correct course of action would have been for him to have locked the premises and ensured that no one was present in them. The Sub-committee also found that leaving a hammer and wooden baton behind the counter amounted to fault on the part of the Premises Licence Holder.
- f. For these reasons the Sub-committee consider it appropriate for the promotion of the licensing objectives, specifically the crime and disorder and public safety objectives, to take the following steps:
  - i. attach the four conditions suggested by the Police in the application and shown in the Annex below (noting that these need to be renumbered since they are currently numbered 1, 2, 3 and 3); and
  - ii. suspend the licence for a period of 2 months meaning that, subject to any appeal that may be commenced, the suspension will commence on Monday 29 January 2018 and end on Thursday 28 March 2018.
- g. The Sub-committee take a serious view of those who do not observe their responsibilities under a premises licence and on this occasion the poor management of the premises resulted in a serious injury to a member of the public. In this respect the Sub-committee considered the advice relating to the Bassetlaw case and determined that the suspension was appropriate to address the failings at the premises concerned and might also act as a deterrent to other licence holders and a

reminder of the requirement to meet their obligations under their licence.

Both the Police, as the applicant for the review, and the premises licence holder may appeal against this decision. The appeal should be made to the Northampton Magistrates Court at Regent's Pavilion, Summerhouse Road, Moulton Park, Northamptonshire, NN3 6AS. Any appeal should be commenced within 21 days of the date on which you receive this notice. A fee may be payable for commencing an appeal. If you appeal and are not successful the Council may ask the Court to order you to pay the Council's costs. If you are in any doubt as to your course of action you should take **independent legal advice**.

#### Annex – Conditions in the Police Application

1. All staff involved in the retail of alcohol will be trained in relation to the law regarding its sale. This training must be completed prior to them being authorised to sell alcohol and refreshed every 12 months as a minimum. A record of this training must be kept and maintained with a copy of the syllabus attached. The recipient of the training must sign to state that they have received and understood the training and this should be dated. Training records must be kept on the premises at all times and made available to an officer from a responsible authority upon reasonable request.

2. Records, including copies of all relevant documentation, pertaining to any and all

employees identification and right to work in the shop must be retained by the premises for the duration of their employment and for at least 6 months after termination of that employment. Employment includes any person who performs any work linked to the general running of the store for payment or otherwise.

3. No implements such as hammers, knives, wooden sticks or bats or anything else that could be easily used as a weapon are to be kept behind the counter, on the shop floor or in the storage areas at the back of the shop whilst the premises is open to the public. Where tools need to be used for any repair in these areas they will be removed once the repairs are complete.

3. After 6pm and up closing time there must be more than one person working in the store at any one time.

The meeting concluded at 11:18 am