

NORTHAMPTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 17 April 2018

COUNCILLORS PRESENT: Councillors Sargeant (Chair), 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 REPRESENTORS: Graham Hopkins (Licensing Consultant)

1. WELCOMES

The Chair welcomed everyone to the meeting.

2. DECLARATIONS OF INTEREST

There were none.

3. REVIEW OF PREMISES LICENCE - MINI MARKET, 26 MARKET SQUARE

The Licensing Enforcement Officer outlined the procedure for the hearing.

Representations by the applicant:

PC Chris Stevens explained there were 3 main areas of concern from the point of view of the Police, which were;

- 1) That a man appeared to have been sold alcohol despite clearly being drunk;
- 2) That a suspected illegal worker was found during a Police visit, and;
- 3) That 4 conditions attached to the Premises Licence had been breached.

PC Stevens showed Members CCTV footage from 1st February 2018 which showed a man, who clearly appeared to be drunk, being helped up from the floor and then take an indirect route across the Market Square, enter the shop and leave several moments later with a bottle of beer. As he walked away from the Market Square, the man kicked the door of a nearby business twice. On his visit to the premises the following day, PC Stevens found a man alone and seemingly working in the shop. The man explained to PC Stevens that "the boss" had stepped out briefly and that he was just watching the shop whilst Mr Balusamy was away. When asked if he held a personal licence, the man informed PC Stevens that he had taken an online course and that the Mr Balusamy had his paperwork. After running a check, it was discovered that the man was known by the Home Office with no right to work in the UK. On his return the owner, Mr Balusamy, informed PC Stevens that the CCTV recorder was broken and so was unable to provide the footage that PC Stevens had requested. At this point PC Stevens noted for Members that when Mr Balusamy, had previously been the victim of a crime, CCTV footage had been made available immediately afterwards.

Members were shown footage from 16th February 2018 which showed a man emerge from a storage/living space to the area behind the counter. A few minutes later, he went back and emerged again with stock and proceeded to stock the shelves. PC Stevens pointed out that this was the same man he had spoken to on his visit to the premises on the 2nd February

and noted that a witness statement from a Senior Licensing Enforcement Officer dated 20th February 2018 showed that Mr Balusamy and his wife were the only Personal Licence Holders for the premises.

PC Stevens explained that 4 conditions of the Premises Licence had been breached:

- 1) A single bottle of beer had been sold,
- 2) 2 shelves of spirits were available for self-service,
- 3) The worker present at the time of the Police visit did not hold a Personal Licence, and;
- 4) The failure to provide CCTV footage when requested.

PC Stevens stated that it was the position of the Police that for those reasons, the licensing objective of preventing crime and disorder was not being upheld and revocation of the premises licence was both reasonable and proportionate.

Representations by the representor:

Graham Hopkins, Licensing Consultant representing the owner, explained that Mr Balusamy's associate had come along to the hearing as a witness and stated that he was appealing the Home Office's decision to refuse to let him work in the UK.

Mr Balusamy's associate explained that on the 16th February he was helping Mr Balusamy, with whom he had been friends for many years. He disputed being called "a member of staff", stating that he was fully aware that he was prohibited from working in the UK but felt obliged to help whilst he was there; Mr Balusamy had previously been attacked and was nervous as there was an altercation in progress outside of the shop. He advised Members that he had not been asked to work and did not receive payment. On the 2nd February Mr Balusamy's associate informed the Committee that he had stopped by the shop to see Mr Balusamy and was asked to mind the shop whilst the owner went to the bank. He was told that he should not serve any customers and to tell anyone who came to the shop that the owner would be back shortly. He reiterated his assertion that he had not been paid at any point.

After addressing the Sub-Committee, Mr Balusamy's associate left the meeting.

Mr Hopkins stated that there was no evidence of a sale taking place on 1st February and contested that the drunk man had stolen the alcohol whilst Mr Balusamy was serving another customer. He also confirmed that the CCTV recorder was again fully operational. Mr Hopkins offered a number of additional conditions to attach to the Premises Licence regarding CCTV including daily checks and a 30-day check to ensure the system's recording capabilities were still functional, and that an incident book be kept on the premises. He noted that although the 2 shelves of alcohol were too high for self-service, they had since been relocated to behind the service point. He stated that imposing the conditions would be proportionate and asked that the licence not be revoked.

In response to a question, Members were informed that Mr Balusamy's wife was employed elsewhere and that she mainly worked at the Mini Market shop in the evenings.

Summing up by the applicant:

PC Stevens advised that the Sub-Committee was entitled to revoke in the first instance, stating that there were no conditions that could be added to the licence to ensure compliance with the licensing objectives.

Members retired at 11:23 to reach a decision.

The meeting reconvened at 11:58.

RESOLVED:

The Licensing Sub-committee carefully considered the following:

- The application received from Northamptonshire Police (“the Police”);
- The papers submitted by the parties;
- The CCTV footage played at the hearing;
- Oral representations from P.C. Christopher Stevens, Northamptonshire Police;
- Oral representations from Mr. Graham Hopkins of GT Licensing Consultants on behalf of the Premises Licence Holder, Mr. Balusamy.

The Sub-committee decided to:

- Suspend the premises licence for a period of 8 weeks; and,
- Add the conditions suggested by Mr. Hopkins on behalf of the Premises Licence Holder.

The Sub-committee received legal advice in relation to:

1. the options available to them under section 52(4) of the Licensing Act 2003;
2. the legal test to be applied in reaching a decision;
3. the need to determine:
 - a. whether a sale of alcohol was made to a person who was intoxicated;
 - b. whether Mr. Balusamy’s associate was working in the premises on the dates suggested by the Police, whether or not he was paid to do so;
 - c. the reasons for the admitted breaches of the licence regarding CCTV and display of spirits;
4. the impact which the breaches of the licence have had on the licensing objectives.

During the hearing the Sub-committee also received legal advice regarding the CCTV footage relied upon by the police. Advice was given in relation to regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 which allows the sub-committee to take into account any documentary or other information produced by a party prior to the hearing.

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

- a. The Sub-committee is satisfied on the balance of probabilities that a sale of alcohol took place to a person who was drunk, this being evidence by the CCTV footage that they have viewed.
- b. The Sub-committee is satisfied on the balance of probabilities that the fact that that Mr Balusamy’s associate was left unattended at the premises by the

Premises Licence Holder when P.C. Stevens visited indicated that he was working at the premises. In reaching that conclusion the Sub-committee had regard to P.C. Steven's statement and the answers given on the day. The Sub-committee also had regard to the fact that Mr. Balusamy's associate was clearly stacking shelves in the premises on the night of 16th February as shown on the CCTV footage played.

- c. Although the Premises Licence Holder has admitted that the CCTV system was not working for a period of approximately 5 days, no satisfactory explanation has been given as to the reason why.
- d. Similarly, although the Premises Licence Holder has admitted that spirits were available for self-service rather than behind the counter, no satisfactory explanation has been given.
- e. These breaches of the licence are viewed seriously by the Council and impact on the licensing objectives.
- f. The Sub-committee are also concerned that whilst much was made of the Premises Licence Holder's experience in retail, the licence breaches were fundamental errors on his part.
- g. For these reasons the Sub-committee have decided to suspend the licence and impose the conditions suggested by the Premises Licence Holder. The conditions will be considered by Officers who will amend them to avoid duplication and conflict with existing conditions.

The Sub-committee also confirmed that the premises may still trade in other goods during the period of the suspension although, if they do so, all alcoholic drinks will need to be removed.

The Premises Licence Holder or the Chief Officer of Police may appeal against this decision to a Magistrates' Court within 21 days of the date this decision is served on them.

Dated 18th April 2018

The meeting concluded at 12:02 pm