

# LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 30 April 2013

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 2.00pm

Present: Councillors: -

Pauline Bradberry JP  
Richard Gell

Glenvil Greenwood-Smith

## 1. APPOINTMENT OF CHAIRMAN

### RESOLVED:

That Councillor Richard Gell be appointed Chairman for this hearing.

## 2. DECLARATIONS OF INTEREST

There were no declarations of interest received.

## 3. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE AT BLACKFRIARS FOOD AND WINE, 8 BLACKFRIARS, RUSHDEN, NN10 9PR

The Commercial Health Manager reported on an application for a review of the premises licence for Blackfriars Food and Wine, 8 Blackfriars, Rushden, NN10 9PR under the Licensing Act 2003.

The matters for which a review application had been requested were listed to the meeting as below:

- Lack of confidence in management to address the requirements for the four licensing objectives.
- No records of staff training
- No refusals register being kept
- No age verification policy
- Failed a test purchase undertaken by the police

Members noted that an application to review the licence at the premises had been received on 9 March 2013 from Mr Tom Morrissey, the Licensing Enforcement Officer for ENC. The appropriate Blue Notice had then been displayed during the required consultation period. As a result of the consultation, representations were received from both the Police and Rushden Town Council, although the contents of the latter representation were deemed not to be valid.

The Commercial Health Manager highlighted the series of possible actions available to the panel, noting that these ranged from no action through to revocation of the premises licence.

### **(a) Evidence from the applicant**

The applicant, Mr Tom Morrissey was then provided with an opportunity to provide his evidence to the panel. He stated that the premises had caused him concern in his professional capacity as Licensing Enforcement Officer for East Northamptonshire Council since the Premises Licence Holder (PLH), Mr Vijithan Muthulingham, had taken over in 2012. He advised the panel that when the PLH had taken over the running of the premises, he had failed to transfer the licence into his name and had drastically altered the layout of the premises without notifying the Local Authority beforehand.

Mr Morrissey stated that he had visited the premises in January 2012 to provide the PLH with a pack containing relevant licencing documents, age restrictions documents, fire regulations and a refusals register. Further concerns were raised in relation to the under-age test purchase conducted by the police on 7 March 2013 which had prompted the review application. Mr Morrissey stated that he felt the PLH had a total disregard for the four Licensing Objectives and had failed to produce documents when asked to that he had previously been supplied with.

Mr Morrissey concluded by stating that the annual Licensing Fee had not been paid by the PLH by 14 March 2013, and as a result the premises licence had been suspended. A further test purchase was conducted on Friday 5 April 2013 to ascertain whether the suspension was being adhered to. A sale of alcohol was made, with a bottle of wine being sold to a colleague of Mr Morrissey's resulting in a breach of the licence suspension. This breach had been referred to ENC's legal team for further action.

### **(b) Questions from objectors to the applicant**

The consultant for the objector and PLH, Mr Patrick Burke was provided with the opportunity to ask questions of the applicant. He requested clarification as to whether the test purchase incident in April was an underage test purchase. The applicant confirmed that it was not an underage test purchase, but was undertaken to ascertain whether the PLH was selling alcohol in breach of his suspended licence.

### **(c) Questions from Licensing Panel to the applicant**

The panel asked questions of the applicant.

Councillor Bradbury asked whether any other visits had been made to the premises, aside from the applicant's initial visit to the premises to supply the pack of licensing documents. The applicant responded that a further visit had been made in December 2012, in order to undertake an inspection. However, he noted that this could not be completed as the PLH was not on the premises and the employee on site was unable to communicate in English.

The Chairman asked the applicant how long the premises licence had been suspended for as a result of non-payment of the Licensing Fee. The applicant replied that the licence had been suspended from 14 March 2013 to 10 April 2013, when the fee had been paid by the PLH's consultant.

### **(d) Evidence from representative**

The meeting was attended by PC Kev Murphy, the Licensing Officer for Northamptonshire

Police. He spoke in support of the application made by Mr Morrissey. He stated that a redacted statement concerning the failed under-age test purchase had been included as an appendix to the report. PC Murphy provided the meeting with the background to Operation Honey which had led to the test purchase, stating that the operation had been conducted by Rushden Safe Communities Team and was intelligence led. Persons involved in underage test purchases were between the ages of 15 and 16 and a half years old and were asked not to enhance their age. As a result, the sale of alcohol from the premises to a test purchaser constituted a straightforward failed test purchase, and had been dealt with by the issuance of a Penalty Notice of Disorder on the night.

#### **(e) Questions from objector to representative**

The licence holder was provided with the opportunity to ask questions of PC Murphy but declined the chance to do so.

#### **(f) Questions from Licensing Panel to representative**

The panel members then asked questions of PC Murphy.

Councillor Greenwood-Smith asked whether the failed test purchase had been made on a random basis or whether it was a targeted visit. PC Murphy confirmed that the visit was based on intelligence and was a targeted visit. A previous test purchase undertaken during the tenure of the previous owner had not been failed.

#### **(g) Evidence from the objector**

The consultant for the objector and PLH, Mr Patrick Burke, was provided with the opportunity to provide evidence on his client's behalf. He stated that it was a cut and dried case and that the PLH accepted that errors had been made at the premises. He considered it was important to outline how the premises would be run in future.

Mr Burke advised the meeting that the member of staff concerned in the failed test purchase has been dismissed, and only his client and his brother were now working at shop. His client's brother was willing to obtain a personal licence so that a PLH would always be present on the premises.

An age verification policy had been adopted, and Mr Burke had advised the PLH to obtain additional age verification signs for the premises as well as operating a "Challenge 25" policy rather than "Challenge 21". A refusals register was in use at the premises and was up to date. Any future staff employed would be given training using a training manual that was supplied to the meeting. Regarding the concern around the PLH's understanding of English, it was noted that he would be attending a course on Basic English that he hoped would improve the situation and aid his understanding of his responsibilities as a licence holder. Mr Burke concluded by stating that he had advised his client to undertake a refresher course on the Licensing Act.

#### **(h) Questions from applicant to objector**

The applicant asked the PLH's representative whether the PLH would confirm he had received the relevant licensing documents prior to the test purchase taking place. Mr Burke confirmed that this was the case and that he had stressed to the PLH the importance of

licensing documents and the necessity to ensure records were kept up to date.

#### **(i) Questions from Licensing Panel to the objector**

Councillor Bradbury asked the PLH's representative how many employees now worked at the premises. Mr Burke replied that only two people worked at the premises, the PLH and his brother. Councillor Bradbury then queried what percentage of goods sold from the shop were alcohol, being told that it was approximately 80%.

Councillor Greenwood-Smith questioned the sudden rush to comply with licensing legislation but the PLH could not supply an answer.

The Chairman then asked who the two people on the premises were when the failed test purchase occurred. Mr Burke advised that one was an employee, who had subsequently been dismissed and the other was a visitor to the shop, not a member of staff.

Subsequently the Chairman asked the PLH directly what the four licensing objectives were. Mr Muthulingham answered by saying "Public Safety, Crime Prevention, Public Nuisance and Protecting Children."

Councillor Bradbury noted the importance of training and wished to know who would be conducting the training and when this would take place. Mr Burke advised that he himself ran relevant training courses and that he could get the PLH and his brother onto courses within a week.

The Chairman wanted to know whether there would be an increase in the number of employees at the premises to provide adequate cover and whether they would be having training prior to commencement of employment. Mr Burke stated that any future staff would be trained, and provided with a copy of the handbook earlier supplied to the meeting and asked to sign to say they had read and understood it.

#### **(j) Closing Statements**

The Chairman provided both the applicant and PLH with the opportunity to make a final statement. The applicant declined, but the PLH's representative stated he would ensure proper training was received, initially to get the PLH's brother trained and with a personal licence, so there was always a PLH on premises.

#### **RESOLVED:**

That the Licensing Panel has considered the application to review the Premises Licence for Blackfriars Food and Wine, 8 Blackfriars, Rushden NN10 9PR and has taken into account the representations by the Licensing Enforcement Officer, the Designated Premises Holder and the Police, and all relevant representations, evidence and documents submitted at the hearing. The Panel considered the provisions of the Licensing Act, the statement of Licensing Policy and the statutory guidance.

The basis of the review was the protection of public safety and the protection of children from harm; however the Panel also considered that the prevention of crime and disorder was engaged

The Panel heard that a criminal offence of selling alcohol to a minor had been committed and that the Employee responsible had been dismissed. It found on the balance of probabilities that the conditions requiring the implementation of the Age verification Policy had not been complied with, in itself a criminal offence. The Panel was satisfied this was a result of poor management by the DPS and Premises Licence Holder Mr Muthulingham, and a basic lack of understanding of the requirements of the Licensing Act. No explanation was offered by Mr Muthulingham as to the reasons for this state of affairs. The Panel also heard that the Premises licence had been suspended from the 14 March to the 10 April 2013 due to non payment of the Licensing Fee, and that the Licensing Authority had forwarded to it's Solicitors a file for the prosecution for unlawfully selling alcohol during this period.

As a result the Panel found that the licensing objectives of the prevention of crime and disorder, and the protection of children from harm were being undermined.

The Panel noted Mr Muthulingham offered to adopt a new " Challenge 25 " Age verification Policy, that the Shop will be run by him and his Brother; that they accepted that they needed further training, and would undertake refresher training (for personal licence holders) within the next 7 days; that any other staff would be trained on the prevention of underage sales; and that Mr Muthulingham, accepted his English was poor and was on a course on Basic English (English for speakers of another Language)

The Guidance indicated that when considering any action which may be necessary on a review of a Licence, the Licensing Authority should consider the use of warnings as an important mechanism for ensuring the Licensing objectives were effectively promoted. However, the Panel were satisfied that a further warning was not a proportionate response to the issues that had arisen at the premises, (bearing in mind the breaches of the existing condition and the commission of criminal offences) to ensure the continued promotion of the Licensing objectives of the prevention of Crime and Disorder and the Protection of Children from Harm.

The Panel had no confidence that the current Age Verification Policy, which referred to 18 years, was sufficient and that the management were enforcing it. The Panel believed that the removal of the existing conditions relating to that age policy and the imposition of new conditions requiring the implementation of a "Challenge 25" policy and a requirement for staff training would be necessary and proportionate

This would include:

Appropriate signage

The keeping of a refusals log.

The requirement that any new sales staff are trained on the "Challenge 25" policy prior to selling alcohol

Annual refresher training is provided

A training log recording the date, contents and training provider is maintained.

The Panel considered that the problems could have been avoided if more effective management had been in place, and found the premises had been trading irresponsibly, and tough action was necessary. The Panel considered the financial impact on the business of suspending the Licence, but decided it would be appropriate and proportionate to suspend the licence for 3 months as a deterrent, in accordance with Paragraph 11.23 of the Statutory Guidance.

The Decision Notice will be sent out in writing. If aggrieved with the Panel's decision, the Applicant and any party that has made representation has the right to appeal to the Magistrates Court within 21 days of the date of the Decision Notification letter.

**Chairman**