

# LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 24 February 2014

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 11.00 am

Present: Councillors: - Pauline Bradberry JP  
Glenvil Greenwood-Smith  
Glenn Harwood MBE

## Also present:

Julia Smith  
(Health Protection Manager)  
Rita Groves  
(Licensing Enforcement Officer)  
PS Mark Worthington  
PS Martin O'Connell  
Karen Cooper  
Claire Willis  
Dorothy Maxwell  
Jegatheeswaren Rajaratnam  
Suresh Kanapathi  
Mebs Kassam  
Barbara Wiggins  
Paul Smith

## Representing

East Northamptonshire Council  
East Northamptonshire Council  
Northamptonshire Police (Applicant)  
Northamptonshire Police (Applicant)  
Supporting the License review  
Supporting the License review  
Supporting the License review  
Licensee (objecting to the Licence review)  
Licensee's Representative  
Legal Advisor to the Panel  
Democratic Services Officer  
Senior Democratic Services Officer

A period of 15 minutes was given so that additional information provided to the Panel could be read.

## 1. APPOINTMENT OF CHAIRMAN

### RESOLVED:

That Councillor Glenn Harwood be appointed Chairman of the Panel for this hearing.

## 2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

## 3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. The Chairman began by reading an e-mail submitted in the name of the Licensee which had been presented by the Licensee's representative via the Council's Legal Advisor. The e-mail advised that Mr Derek Dormer OBE would be attending the hearing and representing Mr Rajaratnam. However, Mr Dormer, who was present at the Hearing, confirmed that ENC had responded to this e-mail confirming that Mr Rajaratnam was being

represented by another party and Mr Dormer was attending the Hearing to support the Licensee and it would be inappropriate for him to speak as the statutory notice to enable him to do so had not been given. The Licensee's representative was asked to confirm that he accepted the situation and Mr Kanapathi confirmed that he did.

## **5. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE AT THE HIGHAM SUPERSTORE, 110 HIGHAM ROAD, RUSHDEN, NN10 6DF**

The Health Protection Manager reported on an application for a review of the premises licence for the Higham Superstore, 110 Higham Road, Rushden, NN10 6DF under the Licensing Act 2003.

The matters for which a review application had been requested were related to the prevention of crime and disorder and protection of children from harm licensing objectives.

Members noted that an application to review the licence at the premises had been received on 3 January 2014 from Northamptonshire Police. The appropriate Blue Notice had been displayed during the required consultation period and as a result of the consultation, representations had been received from:

- East Northamptonshire Council's Licensing Enforcement Officer,
- Northamptonshire Police,
- Northamptonshire Trading Standards Service,
- Rushden Town Council and
- Members of the public.

### **Evidence from the applicant**

Sgt Martin O'Connell presented the applicant's case for the review, with particular reference to two test purchases of alcohol at the premises as set out on page 4 of the application, and accompanying Statements made by the Police Officers involved. The first incident resulted in a fixed penalty notice being served on the licensee. On the second occasion the alcohol was sold to a child of 15-16 years of age by the licence holder and designated premises supervisor, Mr Rajaratnam. Sgt. O'Connell confirmed that the Electronic Point of Sale (EPOS) system at the licensed premises was working correctly.

Section 182 Guidance to the Licensing Act made it clear that the illegal purchase of alcohol by minors should be treated particularly seriously and that the revocation of the licence should be seriously considered.

### **Questions from Licensing Panel to the applicant**

The Chairman of the Panel asked whether, in the first test case, whether the Police could identify who carried out the sale at the Higham Superstore. Sgt O'Connell confirmed that it was a member of staff.

There were no questions from Mr Kanapathi.

### **Evidence from representative**

The Licensing Enforcement Officer had made a representation to support the review application. This related to information provided to the licence holder in respect of selling

alcohol to underage people and how the importance of his licensing controls were discussed with respect to selling alcohol to those that are underage.

The Licensing Enforcement Officer (LEO) advised that she had first become aware that there was an issue when the Higham Superstore had failed a Challenge 21 purchase, where a person over 18 was served with alcohol, but was not asked for proof of age. The LEO had tried to contact Mr Rajaratnam but had been unsuccessful on numerous occasions. However on 13 August 2013 she had made an appointment to carry out a full licence inspection, which had been satisfactory. Discussion on the various conditions of the licence had been held during the inspection. On 9 September 2013 the LEO was advised by PC Kev Murphy that Higham Superstore had failed a test purchase on 6 September 2013. On 20 September the LEO visited Mr Rajaratnam with PCSO Gareth Cross from Thrapston Police Station. Mr Rajaratnam had been advised that if he failed another test purchase within a three month period, then a review would be called on his premises licence which might result in him no longer being able to sell alcohol. He had been strongly advised to use the EPOS system.

Mr Rajaratnam had said that he understood the implications and that he and his wife would be the only people in the shop selling alcohol.

On 2 December 2013, the LEO advised that she had heard from the Police that Mr Rajaratnam had himself failed a second Police test purchase.

The LEO again visited the premises on 7, 11, 24 and 30 January 2013. The store had been closed by 10.10pm on each occasion. However on 12 February 2013 she had received an e-mail from PC Dougie Brown stating that the Store had been open at 11pm accompanied by a photograph apparently showing the store to be open at this time.

### **Questions to representative**

Following a question about whether all conditions of the licence had been upheld, it was noted that apart from the alarm system, a risk assessment and a planning condition regarding external plant equipment, all conditions had been upheld. The LEO confirmed that she had visited the premises on quite a few occasions. It was also noted that although a photograph had been tabled at the hearing, unless there was a witness to trading taking place it was difficult to evidence that the shop owners were in breach of the licence.

When questioned with regard to signage at the premises asking people not to congregate outside, the LEO confirmed that this signage had been present during her inspection in August and that was still present. The LEO had photographic evidence of this.

There were no questions from Mr Kanapathi.

### **Evidence from representative**

Miss Karen Cooper confirmed that she lived at 108 Higham Road, Rushden which was next door to the licensed premises.

Miss Cooper stated that since the shop opened there had been a dramatic increase in anti social behaviour in the area. Although CCTV was visible within the shop, people would congregate outside the premises using loud, abusive and foul mouthed language; nothing would be done to move people on. She advised that on some occasions between the hours of 6pm-10pm the area resembled a riot zone and she had reported the incidents to the Police on numerous occasions. Litter and incidences of broken glass on the road was also a problem. She also noted problems with young people congregating outside flats in Kilburn

Place and sitting on a bench on the property.

### **Questions to representative**

Following a question about evidence from Mr Kanapathi, Miss Cooper confirmed that she kept a log but nothing else which corroborated her account. She noted that the Police were called when incidences occurred.

Sgt O'Connell confirmed that logs were kept of calls to the local area. Between January 2013 and January 2014, officers had a log of 9 incidences called in by people which related to Kilburn Place. Data on calls logged in respect of Higham Road itself was not available as this was too wide an area to identify incidences in the vicinity of the Higham Superstore.. Discussion was held on the number of callers and actual attendances by Police to the area.

Following a question about witnessing anti social behaviour, Miss Cooper confirmed that she had seen people come out of the shop, sit on the wall outside her property and throw things in her garden. She confirmed that another neighbour, Mrs Dorothy Maxwell, had a more direct view of the premises.

### **Evidence from representative**

Mrs Dorothy Maxwell advised that she first started to report problems in November 2012 to the then Licensing Enforcement Officer, Tom Morrissey, and the Police. Mrs Maxwell had been advised at the time that she would need to collect evidence before anything could be done. Mrs Maxwell had kept a log of incidents she had witnessed, but had been advised that she would not be able to gather photographic evidence.

Mrs Maxwell had contacted the Police and East Northamptonshire Council on numerous occasions to report anti social behaviour and criminal damage and had been the subject of abusive behaviour from the young people loitering in the area as a result of challenging such behaviour.

The problem had been worse on the days leading up to and including, the weekend. It appeared that the shop sold single cans of alcoholic drinks rather than in packs of 4 and Mrs Maxwell stated that she regularly witnessed adults being asked to purchase alcohol by young people for consumption by those young people. Mrs Maxwell also stated that the shop also appeared to be selling cigarettes to those under age.

Mrs Maxwell also believed that the problem of anti social behaviour was causing stress to the residents of the local area because of the noise, damage to properties, litter and disregard to residents who lived in Higham Road and Kilburn Place. Mrs Maxwell stated that she had also witnessed the shop staying open until well after the licensed closing hour of 10pm.

Mrs Maxwell informed the Panel that the Licencee had only recently contacted neighbours about these problems despite being invited to attend local meetings.

### **Questions to representative**

In response to a question from Mr Kanapathi, Mrs Maxwell confirmed that she had kept a record of activities which had taken place outside the shop since November 2012 that she had witnessed. Mrs Maxwell also stated that she had copies of her telephone account which showed the number of calls to the Police. Miss Cooper also confirmed that she had made a number of calls to the Police.

Mr Kanapathi asked about the 9 incidents noted by the Police and asked about details. Sgt O'Connell advised that the Police had a process to log calls received in the Police Control Room and these were recorded on the STORM management system. The information stored was a summary of what the caller had reported and a decision was then taken in the Control Room whether or not attendance was required after weighing up the information given and the resources available against any threat. The Police made every effort to attend, but were not always able to respond to reports of incidents in the area of the premises.

*At 12.15pm, the Panel adjourned.*

*The Panel reconvened at 12.25pm*

### **Evidence from Licensee**

The Licensee's representative, advised that Mr Rajaratnam, his wife and three children were now living at the Higham Superstore premises at 110 Higham Road, Rushden. He advised that Mr Rajaratnam wanted to apologise to the Police, the Panel and residents for failing the test purchases referred to earlier.

Mr Kanapathi stated that Mr Rajaratnam had been running the small convenience store for 18 months and realised it was not acceptable to sell alcohol to under 18s. He also realised that he had been wrong when he failed the test purchase when he had sold alcohol illegally and apologised. Mr Rajaratnam had since put a number of processes in place; the EPOS system, carried out staff training and used the Challenge 25 process. A sign was now on the door discouraging patrons of the shop from congregating outside. Mrs Jeyatharshini Jegatheeswaran (Mr Rajaratnam's wife) had obtained a Personal Licence and received training and she would now be the Designated Premises Supervisor at the store. Mr Rajaratnam was also prepared to undertake further training and obtain national qualifications. He had recorded many incidents where he had refused to sell alcohol and the Refusals Register was shown to the Panel.

Mr Kanapathi informed the Panel that the reason for the lights being on later than 10pm was because of re-stocking shelves and general cleaning of the shop premises which could not be carried out during shop trading hours..

Mr Kanapathi stated that the bench at Kilburn Place was on private land and Mr Rajaratnam had no authority to deal with any complaints relating to that area. Mr Rajaratnam had recently met the Police and discussed what other arrangements could be put in place to discourage anti social behaviour. The Licensee had recently visited neighbours and asked if there was anything he could do to help with their concerns. He had provided planters between the shop and 108 Higham Road to help with the anti social behaviour. Other local residents had noted their support for Mr Rajaratnam.

### **Questions to the Licence Holder**

Following disclosure that Mr Rajaratnam was living at the shop premises, Sgt O'Connell asked whether a change of address for Mr Rajaratnam's Personal Licence had been arranged. Mr Rajaratnam advised he had been living at the premises for about 6-7 months and as yet had not been able to arrange for a change of details. Mr Kanapathi stated that the change of detail would be done. Sgt O'Connell also asked about Mr Rajaratnam's understanding of the conditions of the Licence, and what forms of ID were acceptable to purchase alcohol. Mr Rajaratnam confirmed his understanding of the rules and apologised that he had personally failed a test purchase. He confirmed that he would be taking part in further training for a Designated Premises Supervisor.

The LEO also mentioned the change of detail requirement on the licence, then asked for confirmation that Mrs Jeyatharshini Jegatheeswaran (Mr Rajaratnam's wife) was to be appointed as the Designated Premises Supervisor. The LEO re-iterated that the use of the Challenge 25 system was already in Annex 2 of the Premises Licence and should already be in use.

Following a question from the Panel, Mr Rajaratnam confirmed that he had dispensed with the services of the member of staff who had been involved in the test purchase incident in August 2013. The Health Protection Manager confirmed that the date of the test purchase was in September 2013.

The Chairman of the Panel asked Mr Rajaratnam to state the four licensing objectives he was responsible for, which Mr Rajaratnam gave as children, public safety, public nuisance and staff. Mr Rajaratnam confirmed that his training had commenced on 5 February 2014. He also confirmed that more than 50% of his business was from alcohol sales.

The Chairman noted that the Licensing Enforcement Officer had provided help and advice on numerous occasions, before and after the test purchases, and yet incidents of selling alcohol to under age people had still occurred. The Chairman then asked for each party to provide a closing statement.

### **Closing Statements**

Sgt O'Connell advised that it was clear that, regardless of conditions already attached to the Premises Licences, that the sale of alcohol to children had not been prevented; therefore Northamptonshire Police had no alternative but to recommend revocation of the licence.

The Licensing Enforcement Officer confirmed that a great deal of advice had been given to Mr Rajaratnam before the second sale of alcohol to an underage person had taken place. The LEO therefore supported the Police recommendation.

Miss Cooper stated that since the shop had been operating the impact to the area had been significant and asked for revocation.

Mrs Maxwell confirmed that she lived opposite the shop and had observed that children were still obtaining alcohol and cigarettes.

Mr Kanapathi advised that Mr Rajaratnam was going through further training to continue with his livelihood. He had children and was prepared to work with neighbours, Police and others to ensure the business operated correctly. He asked for the apology to be taken into consideration.

*The Chairman adjourned the hearing at 1.20pm for the Panel to reach its decision.*

*The Panel reconvened at 2.45pm to announce the decision.*

### **RESOLVED:**

The Licensing Panel has considered this application for a review of the Premises Licence for the Higham Superstore, 110 Higham Road, Rushden NN10 6DF. The review was called for by the Police and the Panel has taken into account the

representations by the Police, the Licensing Enforcement Officer, Trading Standards, members of the public and all other relevant representations and evidence submitted at the hearing.

After careful deliberation and consideration of the Licensing Objectives, ENC's Statements of Licensing Policy and Guidance issued under Section 182 of the Licensing Act 2003 (amended June 2013) the Panel has reached the following unanimous decision and took into account the legal test that the current operation of the premises is not on a balance of probability promoting the licensing objectives of:

- 1) Prevention of crime and disorder
- 2) Protection of children from harm

**The decision is therefore to Revoke the Premises Licence.**

The evidence submitted by the Police and Trading Standards convinced the Panel that two incidences of illegal under aged sales took place within a three month period.

The Government expects Licensing Authorities to take an extremely serious view of under aged sales, and lists under aged sales as a criminal activity that should be treated particularly seriously.

The Government stresses that the illegal purchase of alcohol by minors impacts on the health, educational attainment, employment prospects and propensity for crime of young people. This was a major factor in the Panel's consideration.

Based on the evidence presented by the Police, Trading Standards and the ENC Licensing Enforcement Officer, it was clear that despite under aged sales incidences having been proven to have occurred, and the Licence Holder subsequently receiving advice from appropriately qualified officers, a further incident of under aged sales occurred. On this second occasion it was the Licence Holder himself who was the seller. Overall, the Panel was convinced there has been flagrant and blatant disregard of legislation in order to maximise gain.

The Panel considered suspension of the Premises Licence, but felt that the evidence indicated little would improve as a consequence of suspension and felt that suspension would not be appropriate enough nor proportionate when considered against the offences committed.

The panel received legal advice in respect of the test to be applied

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 Decision Notification letter.

**Chairman**