

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 14 March 2016

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00 am

Present: Councillors: Richard Gell
Glenn Greenwood-Smith
Gill Mercer

Also present:

Jenny Walker
(Interim Health Protection Manager)

Rita Groves
(Licensing Enforcement Officer)

PC David Bryan

Mr Mustafa Batur

Mr Frank Fender

Mebs Kassam

Representing

East Northamptonshire Council

East Northamptonshire Council

Northamptonshire Police

Premises Licence Holder

Representing Premises Licence Holder

Legal Advisor to the Panel

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Glenn Greenwood-Smith be appointed Chairman of the Panel for this hearing.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence. However, it was noted that an original member of the Panel had been unable to attend the Hearing and had therefore been replaced by Councillor Gill Mercer.

3. DECLARATIONS OF INTEREST

There were no declarations of interest made.

4. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR "LUVLY JUBBLY" 80 HIGH STREET, RUSHDEN, NORTHAMPTONSHIRE. NN10 0PQ

The Interim Health Protection Manager reported on an application to review the Premises Licence at "Luvly Jubbly" 80 High Street, Rushden, Northamptonshire. NN10 0PQ. The

application had been received on 2 February 2016 from Northamptonshire Police and the appropriate Blue Notice had been displayed on the premises during the required consultation period.

The matters for which a review to the premises licence had been sought, related to the prevention of crime and disorder licensing objective and the main reason for the review request was in relation to breaches of the following licence condition:

*On any day the premises remains open after 04:00 from 03:45 a minimum of two SIA registered door supervisors must be employed at the premises.
On any day the premises does not employ SIA registered door supervisors, licensable activities shall cease at 03:45 and the premises shall close at 04:00.*

The Planning Service at East Northamptonshire Council had also made a representation to the review under the grounds of prevention of nuisance, the licensed premises being in breach of its planning condition which stated:

The premises shall not be open to the public before 08:30 hours on any day, nor after 23:00 hours on Sundays to Thursdays and 23:30 hours on Fridays and Saturdays.

The Legal Advisor to the Panel confirmed that planning considerations were separate issues to the matters being considered by the Panel and subject to separate enforcement powers.

No questions were put to the Interim Health Protection Manager.

Evidence from the Applicant

PC David Bryan, representing Northamptonshire Police, attended the hearing and spoke on behalf of the Applicant. PC Bryan outlined the reasons for the review application being made which were set out in the application itself. Particular reference was made to public order incidents which had taken place on 20 September 2015 at approximately 4.20am and 9 January 2016 at approximately 4.05am.

The incident in September 2015 had led to a meeting taking place with the Licence holder and an additional licence condition had been agreed and made through a minor variation of the licence (condition set out above). The incident which took place on 9 January 2016 was, in the view of the Police, a breach of the additional condition.

PC Bryan confirmed that the Police were requesting the Panel to amend the Premises Licence to require the premises to close at 2.00am. This would ensure that the premises were closed before other licenced premises located nearby closed as it was customers exiting those premises and moving over to the "Luvly Jubbly" premises that were considered to be the cause of the public order incidents.

Questions to the Applicant

In reply to a question from Mr Fender, PC Bryan confirmed that it was only the incident occurring on 20 September 2015 which had led to the meeting and subsequent addition of the condition.

Evidence from Rita Groves, Licensing Enforcement Officer

The Licensing Enforcement Officer (LEO) expressed concern at the lack of control over customers at the premises and supported the reduction in opening hours proposed by the Police. The LEO referred to the meeting which had been held following the incident on 20 September 2015 and confirmed that the Licence Holder had indicated that the provision of SIA licenced door supervisors was unaffordable, although a number of options had been explored with the Licence Holder to provide SIA licenced door supervisors on a reduced or shared basis with other licenced premises in the vicinity.

The Panel had no questions to ask the LEO or the applicant.

Evidence from Mr Fender representing the Premises Licence Holder,

Mr Fender confirmed to the Panel that although the Premises Licence permitted off-sales of alcohol, this was only done with order deliveries and alcohol was not sold at the premises. Consumption of alcohol sold at the premises was not, therefore, a cause of the public order incidents.

Mr Fender stated that the incident on 9 January 2016 had resulted from a large group of people entering the premises at approximately 3.30am. Mr Batur had not intended to open the premises beyond 4.00am. However, the group had not vacated the premises by the time the Police had attended at 4.05am.

Mr Fender stated that the fact that the shutters to the premises were half closed and the lights switched off when Police attended on 9 January 2016 demonstrated that the premises were in the process of closing down only 5 minutes past the permitted time. PC Bryan stated that it could equally indicate that the premises were attempting to conceal that they were open beyond the time permitted by their licence.

Mr Fender informed the Panel that since the additional condition had been imposed, Mr Batur was closing down at 3.30am, before the other licenced premises nearby closed, and requested that the Premises Licence be amended to require closure at 3.30am rather than the 2.00am closing time sought by the applicant.

Questions to Premises Licence Holder's representative

In reply to questions from the Panel, Mr Fender and Mr Batur confirmed that the premises accommodated approximately 15 customers and was designed so as not to encourage customers to dwell (there were no tables for instance). There were a minimum of 3 members of staff between the hours of 2.00 and 4.00am and sometimes more.

Both PC Bryan and Mr Fender were provided with an opportunity to sum up their case.

At 10.47am the Panel adjourned to make their decision.

The Panel reconvened at 11.48am to announce their decision.

RESOLVED:

The Licensing Panel has considered this application for a Review of the Premises Licence for Luvly Jubbly 80 High Street, Rushden and has taken into account the Interim Health

Protection Managers report, representations from the respondents Licensing Consultant and Premises Licence Holder and also considered all relevant representations, evidence and documents submitted at the hearing.

The Panel carefully deliberated and considered the licensing objective of Prevention of Crime and Disorder, ENC's Statement of Licensing Policy; Guidance issued under Section 182 of the Licensing Act 2003. The main reason for the review is in relation to breaches of the following licence condition:-

On any day the premises remains open after 04:00 from 03:45 a minimum of two SIA registered door supervisors must be employed at the premises. On any day the premises does not employ SIA registered door supervisors, licensable activities shall cease at 03:45 and the premises shall close at 04:00.

The main consideration was the licensing objectives relating to the prevention of crime and disorder.

Crime and Disorder

- 1 Evidence from Northamptonshire Police Licensing Unit The Panel heard direct evidence from PC David Bryan
- 2 Evidence from the Licence Holder and Representative The Panel heard direct evidence from Mr Mustafa Batur the Licence Holder, and his representative Mr Fender.
- 3 Evidence from Rita Groves - ENC's Licensing Enforcement Officer The Panel heard direct evidence from Rita Groves.

The Licensing Panel having considered all the above are of the unanimous view that on a balance of probability the Luvly Jubbly is not promoting the licensing objective of preventing crime and disorder.

The Panel have, therefore, decided to modify the licence as follows:-

1. Late Night Refreshment – Indoors and Outdoors
Thursday to Saturday 23:00 hours to 03:00 hours
Non Standard Timings
Christmas Eve, New Years Eve and Sundays prior to Bank holiday Mondays until 03:00 hours on the morning following.
2. Opening Hours
Thursday to Saturday 12:00 hours to 03:00 hours
Non Standard Timings
Christmas Eve, New Years Eve and Sundays prior to Bank holiday Mondays until 03:00 hours on the morning following.
3. The condition, "On any day the premises remains open after 04:00 from 03:45 a minimum of two SIA registered door supervisors must be employed at the premises. On any day the premises does not employ SIA registered door supervisors, licensable activities shall cease at 03:45 and the premises shall close at 04:00" be removed.

4. To add to the licence the following condition
The premises does display a clear and prominent signage that no hot food or drink will be served after 03:00 hours Thursday to Saturday.

The Panel received legal advice in terms of:

1. The Licensing Objectives
2. The options available to the Panel
3. The legal test to be applied
4. Section 182 Guidance

The reasons for this decision are:-

1. To promote the Licensing Objective of the Prevention of Crime and Disorder.
2. The modification of the licensable hours to 3:00 am Thursday to Saturday will mitigate the risk of disorder when premises opposite cease licensable activities at 04:00 am.
3. The Police representations which confirm that disorder occurs predominately post 04:00am.

The Decision Notice will be sent out in writing. If any Party, Applicant or Objector who has made a representation, is aggrieved with the Panel's decision, they have the Right to Appeal to the Magistrates Court. That must be done within 21 days of the date given on the Decision Notice, and the modification of the licence conditions do not take affect until expiry of the 21 day period

Chairman

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 22 March 2016

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00am

Present: Councillors: Richard Gell
Roger Glithero
Glenvil Greenwood-Smith

Also present:

Jenny Walker
(Interim Health Protection Manager)

Rita Groves
(Licensing Enforcement Officer)

Lara Bezzina
(Housing Technical Officer)

PC Dave Bryan

Sgt Martin O'Connell

Mebs Kassam

Mr William Perry

Mr Frank Fender

Representing

East Northamptonshire Council

East Northamptonshire Council

East Northamptonshire Council

Northamptonshire Police

Northamptonshire Police

Legal Advisor to the Panel

Licence Holder

Representing the Licence Holder

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Glenvil Greenwood-Smith be appointed Chairman of the Panel for this Hearing.

2. APOLOGIES FOR ABSENCE

No apologies for absence had been received.

3. DECLARATIONS OF INTEREST

Councillor Greenwood-Smith declared an "other" interest in the application being considered by the Panel.

A letter of representation had been received after the expiry of the deadline for the submission of representations and had not, therefore, been circulated with the Agenda papers. The author of the letter had spoken to Councillor Greenwood-Smith at a social event shortly after the Expedited Hearing had taken place. However, Councillor Greenwood-Smith

had not entered into any discussion regarding the licensing procedure relating to The Wheatsheaf, the Expedited Hearing or the full Hearing.

4. EXCLUSION AND PUBLIC AND PRESS

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following item of business because exempt information, as defined under paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972, may be disclosed.

5. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR THE WHEATSHEAF PUBLIC HOUSE, 1 HIGH STREET SOUTH, RUSHDEN

The Interim Health Protection Manager (IHPM) introduced the application for a review of the premises Licence for the above premises. The full Hearing had been convened following the expedited Hearing held on 26 February 2016 which had been instigated by the application made by the Police under Section 53A of the Licensing Act 2003.

Within their application and certificate, the Police considered that the premises concerned were associated with serious crime and/or serious disorder. At the Expedited Hearing, the interim step of suspending the Premises Licence had been taken pending the full Hearing.

No questions were put to the IHPM.

Evidence from the Applicant

On behalf of Northamptonshire Police, PC Bryan summarised the information submitted on 25 February 2016 in support of the application for review, together with supplementary information submitted on 15 March 2016, which had been circulated to parties on 16 March 2016. This included two Incident Reports which PC Bryan also summarised for the Panel.

PC Bryan outlined the procedures for assessing intelligence reports which had been referred to in his submissions. PC Bryan confirmed that the results of the forensic examination of seized items were not yet available.

With regard to the events which had taken place on 19 February 2016, PC Bryan referred to a person who was subject to a "Pubwatch" ban being found at the premises; the statement provided by the drug dog handler and confirmation that the three people arrested were currently on Police Bail. PC Bryan confirmed that the Premises Licence Holder was not being criminally investigated.

Questions to the Applicant

In response to a comment from the Panel regarding the forensic test results not being available, PC Bryan stated that he had initially believed that they would be completed in time for the full Hearing, but had soon afterwards realised that this wouldn't be the case. However, PC Bryan did not consider that the review hinged on the forensic test results alone.

There were no questions from the Panel to the Applicant.

Evidence from Rita Groves, Licensing Enforcement Officer

The Licensing Enforcement Officer (LEO) summarised the representations she had made on the application and expressed concern at the lack of control at the premises when the Licence Holder was not present.

In response to questions from the Panel, the LEO confirmed that the log of events being kept by a neighbour had initially been in relation to noise nuisances and other recorded issues had arisen as incidental issues to this.

There were no questions from the Licence Holder's representative for the LEO.

Evidence from Lara Bezzina, Housing Technical Officer

The Housing Technical Officer (HTO) summarised the representations made on the application concerning the accommodation let at the premises and confirmed that correspondence was about to be sent to Mr Perry regarding the issues raised and the remedial action required.

In response to questions from the Panel, the HTO considered that one existing let room might need to be lost in order to combine it with another room to make a room of suitable size.

In response to a question from the Licence Holder's representative, the IHPM stated that Private Sector Housing was part of Environmental Protection who were consulted on all licensing matters alongside other consultees. The use of the first floor facilities as a house in multiple occupation and the affect this had on the licensed area on the ground floor raised areas of concern. The representation was made on the grounds of Public Safety.

Mr Fender responded that the accommodation issues had been raised as health and safety issues and, as such, did not form part of the licensing objectives.

Evidence from Mr Fender representing the Premises Licence Holder

Mr Fender stated that the remit of the Panel was not to determine the Premises Licence Holder's involvement in criminality, but only to consider the licensing objectives. Accordingly, there was no need to defer a decision pending the outcome of criminal proceedings.

No evidence had been submitted to connect alleged criminal activities with the Premises Licence Holder and did not consider that two incident reports in a period of approximately one year was excessive.

The first floor accommodation was not part of the licenced premises and illegal substances had not been found in the licenced premises itself. There was no evidence of criminal wrongdoing at this stage and the application was based on speculation.

Mr Perry then addressed the Panel and stated that the suspension of the Premises Licence had destroyed his reputation and business.

Mr Fender proposed that the addition of further conditions could address the current

concerns. The Police had the option of applying for a further review should circumstances change.

Mr Fender provided a copy of his representations for the record.

The Chairman of the Panel referred to Mr Fender's use of the term "evidence" in the context of criminal proceedings and confirmed that the Panel worked on the balance of probabilities.

Questions to Premises Licence Holder's representative

In response to a question from the Panel, Mr Perry outlined the procedures used by the "Pubwatch" scheme to enforce its bans on persons entering licenced premises.

In response to questions from PC Bryan, Mr Perry confirmed that he had made no enquiries regarding the banned person and outlined the circumstances of that incident. Mr Perry also acknowledged that as the Premises Licence Holder and Designated Premises Supervisor he was responsible for what took place at the premises, whether he was present or not.

There were no questions to Mr Fender from the IHPM, LEO or HTO.

The Applicant, the Licence Holder's representative and the LEO were provided with an opportunity to sum up their case.

At 11.47am the Panel adjourned to make their decision.

The Panel reconvened at 1.52pm to announce their decision.

The Chairman of the Panel read the following decision to the parties present:

RESOLVED:

Thank you all for attending the Licensing Panel to consider the review of the Premises Licence for The Wheatsheaf 1 High Street South, Rushden, Northamptonshire

This review is as a consequence of a senior police officers application under Section 53a for a summary review.

There have also been representations aside from the police by the Licensing Authority, Environmental Protection, Rushden Town Council, the public and the representative for The Wheatsheaf and the Premises Licence Holder

As a matter of good order it was noted that the character references for The Wheatsheaf from Bob Kirk Supplies and Cesare Marinaro whilst provided to the Local Authority they were not transmitted to the police.

The police having received those this morning and agreed to these documents being allowed under S32 of the Licensing Act 2003 (Hearings) Regulations 2005. The police were allowed 30 minutes to consider these references further but declined a delay in the commencement of the hearing.

The Panel having heard all the representations and considered them in detail have decided unanimously that the interim step of the suspension be removed forthwith.

The Panel have decided unanimously that on a balance of probability the current operation of the premises is not promoting the Licensing Objective of the Prevention of Crime and Disorder.

It is considered by the Panel that the following are appropriate and proportionate:

1. To modify the conditions of the Licence as follows:
 - That the Premises Licence Holder sons be excluded from the premises
 - That the other person bailed by the police be excluded from the premises
 - That the DPS and Premises Licence Holders Director namely Mr William Perry be present at the premises from 6pm until the end of licensable activities Monday to Sunday

The Panel received legal advice in terms of:

- 1) The case of Thwaites
- 2) S 182 Guidance
- 3) The legal test to be applied
- 4) The options available to the panel

The reasons for the decision are:

- 1) The DPS and Premises Licence Holder has not been arrested or investigated regarding the misuse of drugs warrant.
- 2) The Panel decided that the issue of management was the key area of concern and, therefore, conditions added would minimise any future risk.
- 3) The police have not been able to provide any new forensic outcomes relating to the tablets seized.
- 4) The Environmental Protection representations did not concern the licensed area and there are separate powers under the Housing Act 2004 to rely on.
- 5) The drugs paraphernalia seized related to the unlicensed part of the premises.

Any persons aggrieved by this decision has a right to appeal to the Magistrates Court no later than 21 days from the date of receiving the Decision Notice.

The Hearing closed at 1.55pm.