

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 28 November 2016

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00 am

Present: Councillors: **Glenvil Greenwood-Smith**
Barbara Jenney
Gill Mercer

Also present:

Jenny Walker
(Interim Health Protection Manager)

Rita Groves
(Licensing Enforcement Officer)

PC David Bryan

Mr James Anderson

Mr Philip Lamb

Mr Colin Smith

Mr Jon Payne

Mebs Kassam

Representing

East Northamptonshire Council

East Northamptonshire Council

Northamptonshire Police

County Estate Pubs Limited

Thackeray Property Services Limited

Premises Licence Holder

Representing the Premises Licence Holder

Legal Advisor to the Panel

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Barbara Jenney 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 made.

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED

That the press and public be excluded from the remainder of the meeting because exempt information, as defined under paragraph 1 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 GEORGE & DRAGON, HIGH STREET, RAUNDS, NN9 6HS

The Interim Health Protection Manager reported on an application to review the Premises Licence at the George & Dragon, High Street, Raunds, NN9 6HS. The application had been received on 12 October 2016 from East Northamptonshire Council's Licensing Enforcement Officer and the appropriate Blue Notice had been displayed on the premises during the required consultation period. An officer of the Council had witnessed the Designated Premises Supervisor (DPS) of the premises cut the Blue Notice down shortly after putting it up. The Blue Notice had been replaced and the premises licence holder was advised that staff should be instructed to leave the notice alone. This had also occurred at the last review of the premises licence earlier this year and both the premises licence holder and the now DPS were advised at that time.

The matters for which a review of the premises licence had been sought, related to the prevention of crime and disorder licensing objective. The main reason for the review request related to the operator of the premises failing to comply with conditions on the premises licence and the general management of the premises which the Licensing Enforcement Officer did not believe was promoting the licensing objective of preventing crime and disorder.

Northamptonshire Police had submitted a representation to support the review application which related to concerns that the licensing objectives were not being promoted due to non compliance with the licensing conditions. Northamptonshire Police had attended the premises since the last licensing review, which had added two additional conditions, and found that a personal licence holder was not on site whilst licensable activities were taking place, in breach of the licence conditions.

A representation had also been received from Poppleston Allen Solicitors who worked on behalf of County Estates Pubs Limited, who managed the property on behalf of their client, Thackeray Property Services Limited, who were the Freehold owners of the premises. Poppleston Allen had been notified of the application to review the premises licence through the Register of Interest requirements requested by the owners of the premises.

No questions were put to the Interim Health Protection Manager.

Evidence from the Applicant

Rita Groves, Licensing Enforcement Officer at ENC, attended the hearing and spoke in support of her application. Mrs Groves outlined the reasons for the review application which were set out in the application itself. Reference was made to the review of the premises licence held on 4 April 2016 where two additional conditions were added to the premises licence. Mr Smith had appealed the decision of that review, which was due to be heard in court on 2 September 2016. Mr Smith withdrew the appeal days before the case was due to be heard and he agreed to sign a Consent Order which was dated 31 August 2016. A 28 day grace period was given to allow staff members to attend training and to apply to become personal licence holders.

On 3 September 2016 at approximately 22:00, whilst carrying out joint licensing activities with Northamptonshire Police, Mrs Groves entered the George & Dragon with PC Simon Congreve. A member of staff was asked some questions and seemed incoherent and smelled very strongly of cannabis.

On 30 September 2016 at 17:17, Mrs Groves again visited the premises with an ENC Senior Environmental Health Officer. When the person in charge of the premises was asked if she

had a personal licence, she stated that she had passed her course three weeks previously but had not yet received her licence. The DPS was not on the premises.

On 4 October 2016, an ENC Health Protection Technical Officer visited the premises and the person on site was asked if a personal licence holder was on the premises. The person stated that she was a personal licence holder as she had undertaken the course, but could not provide her licence as it had not yet arrived. Mrs Groves confirmed that taking the personal licence course did not make a person a personal licence holder. Mr Smith, the premises licence holder and the DPS should have been aware of this as they both had personal licences. Their lack of understanding was a concern to Mrs Groves.

In light of the breaches of the premises licence conditions and the concerns raised about the suitability of the DPS, Mrs Groves asked the Panel to consider:

- 1) A three month suspension of the Premises Licence
- 2) The removal of the Designated Premises Supervisor
- 3) Any Designated Premises Supervisor for the George & Dragon must not be a Designated Premises Supervisor on any other Premises Licence

Mrs Groves did not see any purpose in adding further conditions to the licence as the current conditions were not being adhered to at present.

Questions to the Applicant

The Panel asked a number of questions of Mrs Groves. In reply to a question as to how she knew what cannabis smelt like, Mrs Groves advised that on 25 March 2016, she and other officers had attended a session at Corby Police Station where she was shown different types of cannabis and plants. Cannabis had a very pungent and distinctive smell and she was confident that what she had smelt in the George & Dragon was cannabis. In reply to a question as to whether the licence was on display in the premises, Mrs Groves confirmed that it was not on display. The DPS had found a number of licences in a file but did not know which one was the newest licence and she also appeared not to know what she was looking at.

In reply to a question from Mr Anderson, Mrs Groves advised that she had chosen to submit a request for review rather than prosecute for breach of conditions as it was often the quickest way to deal with a problem. It was not just her decision and she had talked it through with her manager.

Mr Smith, or his representative, had no questions for Mrs Groves.

PC Bryan had no questions for Mrs Groves.

Evidence from PC Bryan, Northamptonshire Police

PC Bryan spoke in support of his representation. He made particular reference to the visit to the premises on 3 September 2016 by Mrs Groves and PC Congreve where it was noticed that a member of staff smelled strongly of cannabis. PC Bryan had written to Mr Smith on 8 September 2016 following the visit, to inform him of the observation made towards the member of staff. Following receipt of the letter, Mr Smith had left a message for PC Bryan to contact him. In the week commencing 26 September 2016, PC Bryan returned Mr Smith's call but had to leave a message and there had been no further contact by Mr Smith.

On 6 October 2016 at approximately 13:45, PC Bryan had visited the premises after he had noticed the DPS walking back from a nearby Fish and Chip shop whilst he had been walking

towards the premises. A member of staff was present who advised him that she had not received her personal licence but had undertaken the course. During the conversation, the DPS had informed PC Bryan that the staff member was in charge and that she was going upstairs to get ready to go out and then left the bar area.

It was PC Bryan's assertion that the conditions of the licence were being breached and the licensing objectives were not being promoted.

Questions to PC Bryan

In reply to a question from the Panel about his representation, PC Bryan advised that his interpretation of the 'spirit' of the condition was that a personal licence holder should be present in the premises in the licensable area at all times.

In reply to questions from Mr Payne, PC Bryan confirmed that when the now DPS had applied to be appointed, Northamptonshire Police had not made any representations in relation to her application. In relation to the presence of a personal licence holder in the premises on 3 September 2016 and 6 October 2016, PC Bryan confirmed that no enquiries had been made as to whether any of the personal licence holders were on the premises. However, on 6 October 2016 only one member of staff was present who had not yet received her licence. In reply to a question as to whether any search of the premises for cannabis had been undertaken or if there had been any further investigation in relation to the allegation of the smell of cannabis, PC Bryan advised that it was Northamptonshire Police's policy not to undertake searches on the smell of cannabis alone. This was because people could pick up the smell from being near other people who were smoking. Mr Payne clarified that it could then have been possible for the member of staff to have picked up the smell if they had been in the proximity of someone else smoking cannabis. PC Bryan confirmed that no action had been taken to date in relation to drugs at the premises.

Mrs Groves had no questions for PC Bryan.

Mr Anderson had no questions for PC Bryan.

Evidence from Mr James Anderson and Mr Philip Lamb

Mr Anderson advised that he and Mr Lamb represented the freehold owner of the premises. Mr Smith had had a 20 year lease for the premises since 2005 and was currently up to date with his rent. Mr Anderson's clients were concerned about the licence and were looking to protect their commercial interest. They had concerns about what the implications would be for Mr Smith, the premises and the freeholder if something as severe as a three month suspension was imposed. The weight given to the evidence of the smell of cannabis was a matter for the Panel, as well as to the weight given to the evidence of the first review, as those matters had already been dealt with. He reminded the Panel that the purpose of the review was to seek resolution of the issues. He did not believe that suspending the licence would resolve the issues and the freeholder also had reservations that it would. Removal of the DPS may resolve the issues. The Guidance stated that remedial action should be an appropriate and proportionate response to address the cause of concern that had instigated the review. For poor management the removal of the DPS would be an appropriate step. Modifications of the conditions could be imposed but these could have an impact on the business. The Panel needed to consider whether suspension was a proportionate response due to the impact on his clients as they would not be in receipt of rent, the condition of the building would deteriorate and there would be a loss of amenity as drinkers would go to different pubs. Punitive measures would not help to resolve the issues.

Questions to Mr Anderson and Mr Lamb

In reply to questions from the Panel, Mr Anderson confirmed that despite their written representation, his clients saw Mr Smith as a good tenant. Their written representation, which stated that their clients no longer had confidence in Mr Smith, had been based on the evidence they had seen at the time but their verbal evidence today was on instruction from their clients. His clients were content for Mr Smith to stay in the premises and had no issues with him doing so. Whilst it was true that Mr Smith had broken the terms of his lease, his clients did not have grounds on which to terminate the lease. Mr Anderson also clarified that Mr Smith had a 20 year lease which had started in 2000. The fact that there had been two reviews in less than a year with two different DPS showed that the choice of DPS was wrong.

Mrs Groves had no questions for Mr Anderson or Mr Lamb.

PC Bryan had no questions for Mr Anderson or Mr Lamb.

Mr Payne had no questions for Mr Anderson or Mr Lamb.

Evidence from Mr Payne representing the Premises Licence Holder

Mr Payne provided the Panel with some background of Mr Smith and his tenancy. Since the first review earlier this year, Mr Smith had made a number of changes to the way he ran his business. He had changed the DPS, as had been required by the last review, and once the Consent Order had been agreed, he had made arrangements with CPL training for his members of staff to undertake the relevant training. Staff had attended the training on 5 September 2016 and all had passed. A Statutory Declaration was submitted to the Panel which had been signed by the member of staff stating that they did not smoke cannabis and did not tolerate drugs within the George & Dragon. The premises had a zero tolerance to drugs and there had never been any problems with drugs. No search of the premises had taken place following the alleged smell of cannabis. The removal of the DPS would not be a proportionate response.

When Mr Smith had received the letter from PC Bryan following the visit on 3 September 2016 about the alleged smell of cannabis, he was very concerned and had spoken to the member of staff and issued them with a written warning. However, following a discussion with ACAS, that had been withdrawn when they advised that action could not be taken on hearsay evidence.

Following the telephone message left for PC Bryan, Mr Smith did not receive any further messages from PC Bryan. On 7 September 2016, the Council had sent out an erroneous licence which was corrected on 14 November 2016. With regards to there not being any personal licence holder on site when the visits took place, other licence holders were on the premises. Mr Smith was in the premises on and off from 23 August 2016 undertaking repairs and was in the premises most times. A statement was submitted from Town Councillor Bill Tirebuck stating that he was present with Mr Smith whilst he was doing some of the repairs. Mr Payne argued that the statement had significant weight.

Mr Smith explained what action he had undertaken since the first review. He had stopped the staff member from using the lounge area for her personal use, had stopped under 18's in the premises after midnight, all staff had been trained, he had become a member of the British Institute of Innkeepers and he had changed the DPS. He had done a lot of work to ensure that he was compliant with his licence. He had asked for time to train his staff and had not been given a deadline for when this had to be done. On 3 September 2016, he had arranged for all his staff to attend a training course and all staff had passed. He believed

that he had done everything he possibly could and he could not do anymore.

Questions to the Premises Licence Holder and Representative

In reply to questions from the Panel, Mr Smith confirmed that three members of staff had been trained. In relation to the visit on 30 September 2016, Mr Smith advised that he had been on site but was at the back of the premises undertaking repairs. He had not been told of any issues following the two visits by his staff. All staff had been trained on 5 September 2016 but just did not have their licences. Mr Smith stated that he had employed CPL to undertake a complete training package including applying for the appropriate licences. He was not aware the licence applications had not been submitted to the Council.

In response to a question as to why the Blue Notice had been removed, Mr Smith stated that he was not aware during the first review that the notice had been removed. It was during the last 12 months that he had begun to have issues with the Licensing Enforcement Officer. He was not being told when there were issues and on 4 September 2016 he had tried to contact Mrs Groves but had no reply. For the second review, he had told the DPS to remove the notice as he was not aware of any problems at the premises. He was aware that officers had replaced it the next day.

Mr Smith was asked to explain why he had withdrawn his appeal following the last hearing. Mr Smith explained that it was due to costs and he could not afford to carry on with the process. Following the visit on 2 September 2016, he believed that he had done everything possible to get the appropriate licences in place. He stated that he was never given a deadline and he had paid a company to undertake the process.

In response to a question as to whether Mr Smith explained the additional condition about having a personal licence holder on the premises to his staff members, Mr Smith confirmed that he had spoken to all staff. The member of staff who was asked if she was a licence holder was not asked if a licence holder was on the premises. It was not her responsibility to apply for a licence as CPL had been employed to do that.

Mr Smith confirmed that four members of staff worked at the George & Dragon but he also had other staff from his other businesses who worked there from time to time and all had personal licences. The George & Dragon was not his sole means of income as he had two other premises in Raunds. He had been in the trade for 14 years and did not tolerate drugs in any of his pubs.

In response to a view from the Panel that Mr Smith appeared to expect other bodies to advise him on how to manage his business, Mr Payne clarified that Mr Smith engaged professionals to deal with training and the licences. Mr Smith had a well run establishment and met his responsibilities. He visited the premises every day and following the last review, had stopped his staff members from using the lounge for their personal use and not allowing under 18's in the premises after midnight, he had also become a member of the BBI and had changed the DPS.

In response to a question from Mrs Groves, Mr Smith advised that he had never been told that there was a deadline for members of staff to be trained and issued with a licence and there was no mention of 28 days on the Consent Form. He clarified that even though he attended a meeting on 19 July 2016 at ENC and talked about training, he did not arrange for the training until 5 September 2016 as he was going through the appeal process.

In response to questions from PC Bryan, Mr Payne advised that the issuing of a written warning to a member of staff, which was subsequently withdrawn, showed that Mr Smith was very concerned at the issues which had been raised.

Mr Anderson had no questions for Mr Smith or his representative.

Mrs Groves, PC Bryan and Mr Payne were all provided with an opportunity to sum up their case.

At 11.53am the Panel adjourned to make their decision.

The Panel reconvened at 1.36pm to announce their decision.

RESOLVED:

The Licensing Panel has considered this application for a Review of the Premises Licence for The George and Dragon, High Street, Raunds that was requested by Rita Groves, ENC's Licensing Enforcement Officer and supported by PC D Bryan. The Panel took into account the representation of the Licensing Enforcement Officer of East Northamptonshire Council, the Senior Environmental Health Officer's statement, the Health Protection Technical Officer's statement, the representation of PC D Bryan, Northamptonshire Police Licensing Officer, the representation from Poppleston Allen who act for the freeholder, representations from the Premises Licence Holder's representative and the Premises Licence Holder and also considered all relevant representations, evidence and documents submitted for the hearing.

The Panel gave very serious consideration and had regard to:-

- The East Northamptonshire Council's Licensing Policy
- S182 Guidance
- Section 52 Licensing Act 2003

The reason for the review is in relation to the prevention of crime and disorder licensing objective.

Crime and Disorder

- 1 Evidence from ENC's Licensing Enforcement Officer the Panel heard direct evidence from Rita Groves.
- 2 Evidence from Northamptonshire Police Licensing Unit the Panel heard direct evidence from PC David Bryan
- 3 Evidence from Mr James Anderson and Mr Philip Lamb on behalf of Thackeray Property Services Limited the Panel heard direct evidence from both Mr Anderson and Mr Lamb
- 4 Evidence from the Licence Holder and Representative the Panel heard direct evidence from Mr Colin Smith the Licence Holder, and his representative Mr Jon Payne of Lacey's Solicitors.

The Licensing Panel having considered all of the above are of the unanimous view that on a balance of probability the George and Dragon is currently not promoting the licensing objective of the prevention of crime and disorder.

The Panel have, therefore, decided unanimously that it is appropriate and proportionate that

1. The Designated Premises Supervisor be removed.
2. The premises licence be suspended for a period of 1 month.

Agenda Item 7 (b) (i)

3. Any Designated Premises Supervisor for the George and Dragon must not be a Designated Premises Supervisor on any other Premises Licence.

The Panel received legal advice in terms of:

1. The Licensing Objectives
2. The options available to the Panel – Under Section 52 Licensing Act 2003
3. The legal test to be applied
4. Section 182 Guidance

The reasons for this decision are:-

1. The Panel were of the view that on a balance of probability a member of staff had been in contact with cannabis and that the Panel gave greater weight to the content of Rita Groves, the Licensing Enforcement Officer statement which was supported by the opinion of PC Congreve within that statement.
2. There is a lack of leadership/understanding of obligations by the DPS within the premises which is not promoting the licensing objective of the prevention of crime and disorder. Further, the lack of obligation appears to extend from the Premises Licence Holder throughout the management of the premises and the Premises Licence Holder appears to be devoid of any understanding in his responsibilities in that capacity.
3. The suspension of the Premises Licence is appropriate and proportionate because the Premises Licence Holder knew what the new conditions added to the licence on the 2 September 2016 were. However, the Premises Licence Holder did not adhere to the conditions and was, therefore, operating the premises otherwise than under and in accordance with an authorisation.
4. This is the second review of the premises licence within the calendar year.
5. The Panel were of the view that the Premises Licence Holder appears to abrogate all responsibility for management and expects to be prompted for his responsibilities by third parties

The Decision Notice will be sent out in writing. If any Party 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 of receipt of the Decision Notice.

Chairman