

LICENSING PANEL

TUESDAY, 23 JUNE 2015

PRESENT:- Councillors Alan Bishop, Oliver Donachie and Peter Watts

7. Appointment of Chair

Resolved – That Councillor Peter Watts Chair this meeting of the Panel.
(Councillor Watts took the Chair)

8. Declarations of Interest

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

9. Exempt Items - Exclusion of Press and Public

That, in accordance with Section 100A(4) of the Local Government Act 1972, the public be excluded during the discussion of the matters referred to in Item 5 of the Notice of the Meeting on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act. (Minute 11 refers.)

10. Application to Vary a Premises Licence to Specify an Individual as a Premises Supervisor

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an objection, received from Wiltshire Police to an application to make Mrs Kavitha Sathiyathevan the Designated Premises Supervisor for Abby's, 147 Manchester Road, Swindon, SN1 2AF, (b) written representations from Wiltshire Police objecting to the appointment of Mrs Kavitha Sathiyathevan as the Designated Premises Supervisor for Abby's, 147 Manchester Road, Swindon, (c) oral submissions in support of the objection from Jacqueline Gallimore (Acting Police Licensing Manager) and PC Diffin, (d) oral submissions received in support of the application from Messrs Britton and Ioannov (Devereaux Solicitors) solicitor to the applicants, and Mrs Kavitha Sathiyathevan (Designated Premises Supervisor nominee), (e) consideration of Police Storm logs and Statements from PC Keith McLaren and PC Michael Diffin regarding the sale of alcohol to a woman the Police believed to be drunk, (f) CCTV footage from Abbys showing the sale of alcohol to a woman the Police believed to be drunk, (g) questions from Members to the Police and Mrs Kavitha Sathiyathevan and her legal representative and answers received, and (h) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy.

The Police case for opposing the appointment of Mrs Kavitha Sathiyathevan as Designated Premises Supervisor can be broadly summarised as follows:

- The objection related to a pending prosecution of Mrs Kavitha Sathiyathevan for the sale of alcohol to a drunk person contrary to Section 141(1)(a)2(a) and (4) of the Licensing Act 2003.

- That Mrs Kavitha Sathiyathevan was therefore not an appropriate person to hold the role of Designated Premises Supervisor.
- Paragraph 4.26 of the Guidance to Licensing Act 2003 was relevant.
- That the Panel had the powers to hear the case before the matter was presented to the Magistrates Court.
- A verbal brief from PC Michael Diffin regarding the issues facing licensed premises in the area of Broadgreen, arising from the sale of alcohol including antisocial behaviour and public nuisance arising from street drinkers.
- PC Diffin's evidence as to the assistance offered to licensed premises in respect of upholding the Licensing Objectives and the need for strong management who understand their obligations under the Licensing Act in licensed premises to facilitate this work.
- The conditions currently in operation at the premises (conditions 15 to 18 having been imposed by a previous Licensing Panel following a successful review).
- The Police view that the premises have struggled to operate properly in a difficult area.
- A response to Councillor Oliver Donachie regarding exceptional concerns and the Police's level of concern that there was no definition in the guidance but that the Police had considered a common sense approach based on knowledge, the location of the premises, the individual and the history of the operation of the premises.
- The concerns of the Police in respect of the training records provided and the lack of evidence of any updated records.
- That two Police officers had submitted evidence that in their opinion a sale of alcohol had been made to a customer who was drunk as the sale was witnessed and in their opinion the customer was drunk when entering and leaving the shop.
- That the customer in question was known to the Police regarding alcohol issues.
- That the shop was on a red route and had been so for six years which increased issues facing the premises and its staff.

Points raised by the applicant and her solicitor could be broadly summarised as follows:

- The objection to Mrs Kavitha Sathiyathevan becoming the Designated Premises Supervisor was set out on page 31 of the agenda papers and the main reason was her impending prosecution.
- If this matter, yet to be determined, was taken out of the equation then there was little else to consider and Mrs Kavitha Sathiyathevan should be treated as innocent until proven guilty in respect of the pending court case.
- CCTV footage of the sale of alcohol to a woman who was allegedly drunk was available for review.
- The conditions referred to in the Police submission were not against the applicant but were against the Premises Licence.
- If the Panel were satisfied that Mrs Kavitha Sathiyathevan was a suitable person to be a Designated Premises Supervisor, if the later court case were to go against her then the Premises Licence could be subject to a further application for review.

- The test before the Panel was one of common sense and was subjective as to whether the person identified by the Police was drunk or not.
- Mrs Kavitha Sathiyathevan gave evidence that she had not knowingly sold alcohol to a person alleged to have been drunk.
- Mrs Kavitha Sathiyathevan was asked by her legal advisor to explain
- Questions by her solicitor to the applicant and answers provided related to her understanding of the Licensing Objectives, who she could sell alcohol to, how she would identify someone who was drunk, her experience of drunk people attempting to buy alcohol, the challenge 21 policy, the legal age for buying alcohol, whether people were allowed to consume alcohol on the premises, the hours under which sales of alcohol were permitted, and the maintenance of a refusals book, the use and operation of CCTV in the shop,
- That Police concerns regarding training records were based on old records and that these had not formed part of the written Police submission which related to a sale of alcohol to a person alleged to be drunk.
- That the applicant was in possession of a personal licence and as such needed to pass the relevant test.

The Panel also heard Police questions to and answers from Mrs Kavitha Sathiyathevan in respect of her knowledge of the conditions on the Premises Licence, how the applicant would conduct a Health and Safety Assessment at the premises, training undertaken by the applicant and her understanding of the Licensing Act.

The Panel adjourned to reach its decision but determined that as the decision largely rested on the determination of whether, in its view, there had been a sale of alcohol by Mrs Kavitha Sathiyathevan to a drunk person that it would review the CCTV footage, consider the statements of PC Diffin and McLaren and review the Police Storm Logs. Following this it would consider submissions from both parties in respect of that information.

The Police submission on the CCTV footage and Police Statements and Police Storm Logs can be broadly summarised as follows:

- That the statements of PC Diffin and PC McLaren referred to evidence of the person buying alcohol being drunk before she entered the shop and upon exiting it.
- That the statements did not come to life the same as if the Police officers were present to explain them.
- That CCTV footage on its own couldn't identify drunkenness of an individual but the Police had vast experience in doing this and the Criminal Prosecution Service had accepted Police evidence relating to this matter.
- The Police were satisfied the woman on the CCTV footage was drunk at the time of the sale of alcohol.
- In response from a question from Councillor Oliver Donachie the Police confirmed that one of the skills the police possessed was determining tolerance to alcohol when determining the level of drunkenness.

The submission on behalf of the applicant on the CCTV footage and Police Statements and Police Storm Logs can be broadly summarised as follows:

- That the sale of alcohol needed to be made to a person who the applicant knew to be drunk.
- The Police review was set out in paragraphs 3 and 4 of their letter dated 15th April 2015 and that CCTV footage didn't support this contention.

The Panel adjourned to reach its decision

Resolved – That the application by the Premises Licence Holders to vary the vary the Premises Licence granted in respect of Abbys, 147 Manchester Road, Swindon, to specify Mrs Kavitha Sathiyathevan as the Designated Premises Supervisor be approved.

Reasons

1. The Panel heard evidence from the Police regarding the sale of alcohol to a women they described as drunk, Police experience in determining such matters, together with Storm Log details of the person in question relating to her drinking and travelling from the town centre to the Manchester Road area. It also considered the issue of whether as a person known to the Police might have a higher than normal tolerance for alcohol and whether she might be able to better mask its effect on her.
2. The Panel considered the statements provided by PC McLaren and PC Diffin and weighed these against the CCTV footage which showed the sale in question, the person in question entering the shop, conversing with Mr Raveendran, being assisted in choosing the alcohol she wanted, paying for her sale, checking her change and putting a donation in a charity box placed upon the counter. The Panel did not see evidence of drunkenness during these actions. The Panel also considered the evidence of Mrs Kavitha Sathiyathevan that she did not believe the lady shown on the CCTV footage to be drunk.
3. The Panel noted the contents of the Police Storm Log indicating that the customer referred to in the Police case had been drinking in the town centre prior to arriving at Abbys but also noted that they did not refer to her as being drunk.
4. The Panel determined that in their view it was not proven to their satisfaction that Mrs Kavitha Sathiyathevan had sold alcohol to a person she knew was drunk (the person referenced in the CCTV footage).
5. Having reached the determination set out in 4 above the Panel determined that the other concerns expressed by the Police were not sufficient to refuse the application for Mrs Kavitha Sathiyathevan to become the Designated Premises Supervisor for Abbys, 147 Manchester Road, Swindon.
6. The Panel noted that with reference to the outstanding case in the Magistrate's Court that this would be dealt with, on its merits and evidence presented to the Licensing Magistrates at that hearing. It made no attempt to prejudge that hearing and noted that should the charges be proven the Court would make its own determination as to any action to be taken.

The Panel noted it had some concerns regarding training at the premises and felt

that these should be addressed through training provided by an independent external trainer.

The Chair reminded all parties that they had the right of appeal to the Magistrates Court and that an application for any such appeal should be made within 21 days of the receipt of this decision notice incorporating the reasons for the Panel's decision.