

LICENSING PANEL

MONDAY, 10 APRIL 2017

PRESENT:- Councillors Alan Bishop, Peter Watts and Caryl Sydney-Smith

41. Appointment of Chair

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

42. 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.

43. Consideration of an Objection Notice to a Temporary Event Notice, Simply Fresh, 160 Cricklade Road, Swindon SN2 8AG

The Council's Licensing Manager, at the request of the Panel telephoned the applicant and his legal advisor to clarify the reason for their absence at the hearing. The Council's Licensing Manager was unable to contact the applicant. However, the Council's Licensing Manager was able to confirm that the applicant's legal advisor had confirmed that he had not received instructions for the applicant and was therefore not representing him.

The Panel noted that the first date applied for under the Temporary Event Notice was Monday 13th April 2017 and determined that it was impractical to adjourn the hearing for this date. As the facts before Members were the same for all three dates the Panel determined that, as the Council's Licensing Manager had confirmed that the applicant was aware of the date and time of the hearing and that no application had been made for a deferral, the hearing for all three applications should proceed in the applicant's absence.

The Council's Licensing Officer introduced the report noting:

- The Police objection to the applications for Temporary Event Notices for 160 Cricklade Road, Swindon were made on the grounds the proposed events would undermine the Prevention of Crime and Disorder Licensing Objectives.
- There was currently no Premises Licence operational at the premises. This meant that the conditions previously in place for the premises would not be valid.
- The options available to the Panel when reaching their decision.
- The dates and times set out in the application.

PC Michael Diffin advised the Panel that the Police had supporting evidence to submit to the hearing. The Panel determined that the supporting information could be tabled.

The Police case for review and a summary of points raised can be broadly summarised as follows:

- That the Premises Licence previously held by the premises expired on 16th July 2016.
- Mr Thasarathkumaran had indicated to the Police that he was the Premises Licence Holder and Designated Premises Supervisor. The Police contended that in their opinion he was aware that these had not in fact been transferred when making an application for a Temporary Event Notice on 24th March 2017.
- A further application was received from Mr Ragunathan Rasaiya on 30th March 2017.
- On 18th October 2016 a Police visit found a lone female at the premises. This female had been refused leave to remain in the United Kingdom and had no right to work.
- When a transfer request was received on 13th March 2017 checks showed that the business had been dissolved in July 2016 and that no application to transfer the Premises Licence had been made and so there was no Premises Licence in existence.
- Discussions with Mr Thasarathkuman's solicitor indicated that his client owned the stock at the premises. The Police contended that although the application for a Temporary Event Notice had been received from Mr Rasaiya it was Mr Thasarathkumaran who would operate at the location.
- A visit to the store whilst it was managed by Mr Thasarathkuman on 18th October 2016 had identified breaches of conditions 5, 7, 8 and 9 of the Premises Licence.
- The Police believed that Mr Thasarathkuman's failure to comply with previous licence conditions proved that he was not actively promoting the Prevention of Crime and Disorder Licensing Objective at that time and would not promote licensing objectives in the future.

The Police answered questions in respect of:

- Details relating to the illegal worker found at the premises.
- The failure of Mr Thasarathkuman to maintain and operate CCTV at the premises.
- That whilst the Police had no direct evidence against Mr Rasaiya they believed that he would not be in control of the management of the premises should a Temporary Event Notice be granted.
- The Police contention that Mr Rasaiya's application was only forthcoming when Mr Thasarathkuman believed he would fail in his application.
- Mr Thasarathkuman's failure to engage with them in respect of someone managing the premises whilst he sold the remainder of his stock.

In the absence of the applicant the Panel considered the written submission for a temporary Event Notice.

Resolved - That having carefully considered (i) applications for three Temporary Event Notices and representations in relation to the objection from Wiltshire Constabulary, (ii) and taking into account the Secretary of State's Guidance and the Licensing Authority Licensing Statement, and (iii) having in mind the promotion of the Licensing Objectives in particular the prevention of Crime and Disorder the Panel has decided to issue a counter notice against the temporary event notices covering the periods Thursday 13th April 2017 to Tuesday 18th April,

2017, Thursday 20th April 2017 to Tuesday 25th April 2017 and Thursday 27th April 2017 to Tuesday 2nd May 2017, as it was not satisfied that Licensing Objectives in respect of the Prevention of Crime and Disorder would be upheld if the temporary event notices were permitted to proceed.

Reasons

1. The Panel heard evidence the Premise Licence held by Simply Fresh Limited, 160 Cricklade Road, Swindon, had lapsed in July 2016 when it went into voluntary liquidation. Nevertheless the business had continued to sell alcohol. Subsequently the Police found numerous breaches of the Premises Licence, including a failure to implement a Challenge 21 scheme, ensure training of all staff, the display of appropriate signage and the keeping of a single refusals book. There was also an illegal worker employed in the premises.
2. Although there was no actual evidence the applicant was connected to the premises at the time it had a Premises Licence, he did not appear before the Panel to give evidence as to how he would ensure that the Licensing Objectives would not be undermined.
3. The Panel had no confidence that the applicant would have sufficient autonomy from the business owner to ensure that the Licensing Objectives would not be undermined.

The Chair reminded the Police that they had the right of appeal to the Magistrates Court against this decision and that any such appeal should be made within 21 days of the receipt of the written determination and no later than five days before the scheduled event. The Panel also requested that the Council's Licensing Officer advise the applicant of this right of appeal when issuing a counter notice against the temporary event notices.