

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION FOR REVIEW OF PREMISES LICENCE: ALPHA, 36 STATION ROAD, NEW MILTON

Decision of the Licensing Sub-Committee hearing held at Appletree Court, Lyndhurst on Friday, 5 February 2010

1. Members of the Licensing Sub-Committee

Councillor G C Beck (Chairman)
Councillor Mrs McLean
Councillor S S Wade

2. Parties and their Representatives attending the Hearing

Mr S Lawford, Trading Standards – Applicant for Review
Mr R Trencher, Solicitor – Hampshire Constabulary, in support of the Review
PS Adams - Hampshire Constabulary, in support of the Review
PS Barry - Hampshire Constabulary, in support of the Review
PS Kingsnorth - Hampshire Constabulary, in support of the Review
Miss G Fice - Hampshire Constabulary, in support of the Review

Mr T George – Premises Licence Holder
Mr I Newbery – Solicitor for the Premises Licence Holder
Mr Navanathan - Premises Manager

3. Other Persons attending the Hearing

None.

4. Parties not attending the Hearing

None.

5. Officers attending to assist the Sub-Committee

Mr E Williams – Legal Advisor
Ms M Stephens - Clerk

6. Decision of the Sub-Committee

To revoke the licence.

7. Reasons for the Decision

The Sub-Committee carefully considered the application along with the evidence, both written and oral, supplied by the applicant, its supporter and the premises licence holder.

It was not in dispute that sales of alcohol to minors occurred at the premises on three separate occasions over an eight month period. These sales were evidenced by test purchases carried out by the Police and Trading Standards.

It was also apparent to the Sub-Committee that intelligence suggested that the sale of alcohol to minors at the premises occurred on other occasions.

The Sub-Committee also took into account the fact that the illegal sales took place despite visits, letters and warnings from the Responsible Authorities. The applicant gave evidence to the effect that a review of a premises licence is very much a last resort, but that the number of illegal sales over a short period of time, coupled with a total lack of cooperation on the part of the licence holder, made a review inevitable.

It was also apparent from the evidence that a number of the license conditions had been continually breached since the licence was granted.

The Sub-Committee has concluded that poor or absent management was the primary cause of the sales of alcohol to minors.

Section 146(1) of the Licensing Act 2003 ("the Act") provides that '*A person commits an offence if he sells alcohol to an individual aged under 18*'.

The Guidance issued by the Secretary of State under section 182 of the Act states at paragraph 11.23 that, where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes:

"The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence"

The Guidance further states at paragraph 11.25 that:

"There is certain criminal activity that may arise in connection with licensed premises which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises [and there are enumerated a number of crimes... which include] for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people."

In addition, the Guidance at 11.26 states that:

“It is envisaged that licensing authorities will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered”.

Therefore, and in line with the decision in the case of R (on the application of Bassetlaw District Council) v Worksop Magistrates' Court [2008] All ER (D) 65 (Nov), where there is criminal activity arising in connection with licensed premises, a licensing authority should not restrict itself to solely considering what steps could be taken to remedy the cause of breach. The licensing authority should also consider the promotion of the licensing objectives in the interests of the wider community, which could include deterring other premises from selling alcohol to minors.

The Sub-Committee has considered representations made by the premises licence holder to the effect that the licensing authority should take no action because the business is in the course of being sold, which would mean a new owner and a new Designated Premises Supervisor. The argument was that this in itself would resolve the problem.

The Sub-Committee was not satisfied with this argument because:

1. As stated above, the licensing authority should consider the promotion of the licensing objectives in the interests of the wider community. If premises could escape sanction for such serious breaches by a change of ownership there would be little to deter premises from engaging in this type of criminal activity.
2. There is no certainty that the sale of the business would take place; if it did not, the problem would not be resolved.
3. There is no certainty that the application of the proposed new Designated Premises Supervisor (who was not present at the hearing) would be accepted.
4. There is no certainty that the problems would be resolved under new management – as a point of note, the new owner (who was at the hearing) lives in Harrow.
5. If the licence is revoked, any new owner could apply for a new licence, in any event.

Taking account of the seriousness of the matter and the licensing authority's duty to take steps with a view to the promotion of the licensing objectives in the interests of the wider community, the Sub-Committee has decided that the premises licence should be revoked.

Date: 05 February 2010

Licensing Sub-Committee Chairman: Cllr G C Beck

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Decision notified to interested parties on 9 February 2010