



NOTICE OF DETERMINATION

Date of Hearing: 17 April 2014

Licence Type: Application for the grant of a premises licence

Name of Applicant: Mrs Gunay Sert

Name of Premises/Postal Address of Premises: 31 St Stephens Road, Norwich NR1 3SP

Licensing Sub-Committee: Councillors Stammers (Chair), Maxwell and Button

Responsible authorities : Michelle Bartram, Tom Munday and Richard Spinks of Norfolk Constabulary Licensing Team and Duncan Harris on behalf of Trading Standards

Other persons present: on behalf of the applicant – Gunay Sert, Mehmet Sert and Mehir Kilic (legal advisor/translator)

Also present were: Michael Shaw, Dogan Terbas, Deborah Budd, Ian Streeter (Norwich City Council Licensing Manager), David Lowens (nplaw Solicitor) and Doreen Cochrane (local resident and objector)

DETERMINATION:

Prior to the start of Committee the councillors carried out an unaccompanied site visit to 31 St Stephen's Road where councillors had noted the presence of bottles of 'Frosty Jacks' white cider by the door to the premises and present within the shop display area with wrapping in a condition that indicated one bottle had been removed from this bundle.

In addition Councillor Maxwell mentioned that she had been contacted by a person regarding this application but as this person was unwilling to provide any comment in writing, the legal advice given at committee was that no weight whatsoever should be placed upon this information. Councillor Maxwell confirmed that she was not pre-determined in respect of this matter, retaining an open mind.

Mr Streeter then presented the report and provided a plan to committee showing the location of the application premises and the location of those persons who had written in support of and in opposition to the application.

The applicant assisted by Mr Kilic who acted as her translator then presented the application and in addition to those matters proposed as the operating schedule shown on

appendix A of the agenda offered additional conditions during the presentation and questioning as follows:

1. Mr Mehmet Sert shall not work behind the counter as a cashier and shall not otherwise serve customers at 31 St Stephen's Road.
2. Condition 14 of the proposed conditions in Appendix A was amended to read "a personal licence holder which shall not be Mr Mehmet Sert shall be present on the premises and supervise the sale of alcohol throughout the permitted hours for the sale of alcohol".
3. This premises licence shall not come into effect until at least one other member of staff than Mrs Gunay Sert (which cannot be Mr Mehmet Sert) holds a personal licence.

During the application it was confirmed that Mrs Gunay Sert was the applicant and that the intention was to sell alcohol for consumption off the premises between 8.00 am and 11.00 pm. A copy of the personal licence held by her was available if needed. It was confirmed to be correct that she had worked at the premises under the previous management. The applicant noted that the decision of the committee had been to suspend the premises licence for three months rather than to revoke the premises licence and mentioned that the suspension was felt to be appropriate. The applicant mentioned the decision of the Magistrates Court was currently being appealed. The applicant confirmed that since 13 January 2014 the premises had stopped serving or displaying alcohol. Regarding the bottles of alcohol noted at the site visit, the applicant mentioned that their CCTV system could be examined to confirm that no sales had taken place and it was possible that the alcohol had been purchased from other premises and dumped at 31 St Stephens Road. The applicant noted the conditions being suggested and noted that condition 3 (CCTV) was already implemented at the premises. The applicant also mentioned that a till prompt system was installed, prompting the person at the till to ask for identification when an age related product was being sold and further mentioned the stock control system, the intention being to mark with ultra violet ink the date of purchase of alcohol to enable the product to be identified against the necessary invoice of that date so as to confirm where the particular stock had arrived from. The applicant confirmed that Mr and Mrs Sert were aware of the conditions proposed and they were willing to co-operate with Trading Standards and the Norfolk Constabulary in respect of the licensing objectives.

There was discussion following questions from the councillors regarding the nature of Mrs Sert's interest at the time of the previous committee hearing and at the time of the magistrates court decision to revoke the premises licence.

It was confirmed that Mr Capti had not had day to day management of the premises and though theoretically in charge had a limited role only. He had effectively left control of the premises to others three or four years ago. It was agreed that Mrs Sert became DPS following the decision of the licensing sub-committee but prior to the appeal being heard by the Norwich Magistrates Court. She stated she had not been DPS when the instances of underage sales occurred or when the counterfeit items were found on the premises. She confirmed in response to questions that she had not sold any alcohol at these premises since 13 January 2014. In respect of those bottles of Frosty Jacks cider noted on the premises this morning, she mentioned that these may have been forgotten but were

not for sale. Councillors noted that these appeared to be in the wrapping for a pack of six bottles with one bottle missing and had been on display.

The applicant mentioned that she was intending to be at the premises 11.00 am to 3.00 pm and then again from 7.00 pm until close and another member of staff was intended to cover other occasions who would be obtaining a personal licence. The applicant responded to questions as to how she would enforce an age challenge scheme in the case of an English language speaker and some practical difficulties were noted regarding English language skills in this situation. The applicant's representative confirmed that her personal licence training had been undertaken in Turkish and a certificate of this training was also available. The applicant said that Mr Mehmet Sert would not be working at the shop but would be helping with the obtaining of alcohol via cash and carry purchases. The applicant offered a condition that Mr Sert would not be involved behind the counter and confirmed that his personal licence would not be used.

In response to questions from the licensing manager, the applicant confirmed that Mr and Mrs Sert were operating this business and that if the application was granted it would be Mrs Sert who would manage the business but Mr Sert would have a financial interest in the business. It was confirmed that Mrs Sert would not be able to complete any incident book in English. Mrs Sert mentioned that she had previously cleaned the shop and was involved in the business in that way and it was agreed that from time to time Mrs Sert had sold alcohol at these premises.

Following questions the responsible authorities then provided their representations, the Norfolk Constabulary noting that their concern was that the management of the premises had not effectively changed and they mentioned the views of the Norwich Magistrates Court. They felt the new application was made too soon and was a way of manipulating the licensing process and noted that under the old management significant problems had occurred and damage to the licensing objectives had taken place. Problems had occurred with obtaining CCTV and the constabulary requested that if the councillors were minded to grant a licence, a condition be imposed requiring all members of staff to be able to access the CCTV system. The constabulary mentioned that the location of these premises was close to a school. The constabulary view was that the premises had no strong management structure and the councillors needed to exercise caution and consider the history of this matter when considering this application.

The Trading Standards department of Norfolk County Council (Mr Duncan Harris) noted the concerns of trading standards and asked the committee to give great weight to the protection of children from harm and the crime and disorder objectives, noting that at the time of the magistrates court hearing Mrs Sert was DPS and Mr Sert was in day to day management of these premises. Trading Standards was concerned that shops improvement tended to be temporary when they were under investigation but this did not lead to a long term improvement. Trading Standards had little reason to believe a new name would have significant affect upon the necessary promotion of the licensing objectives and continued their formal objection to the grant of a new licence.

The applicant questioned the responsible authorities and it was agreed that the Norfolk Constabulary was unaware of any further incident since the magistrates hearing and Trading Standards confirmed that a test purchase exercise in October 2013 had taken place when the intended purchase had been refused. The constabulary noted that following the revocation of the premises licence they had visited on 31 January and had seen that alcohol was still present in the public areas of the premises although it was agreed that they had not witnessed any sale.

Mrs Cochrane a local resident then spoke to Committee noting her concerns regarding youngsters drinking in the area of these premises and mentioning the length of time that this had occurred. She confirmed that she was able to see persons proceeding to and leaving the premises and noted that she had seen persons in school uniform from the Hewitt School in possession of alcohol which she felt had been obtained from these premises. She noted that since the licence had been revoked the area was now peaceful and quiet with a significant reduction in anti-social behaviour compared to the situation which had existed when the premises were able to sell alcohol.

The applicant summarised her application noting that it was Mrs Sert who had refused a test purchase in October and there had been no instances regarding the sale of alcohol to minors for a significant period. The applicant had demonstrated that she could run the premises well.

Councillors asked for clarification of the involvement of Mr Sert in the intended running of the premises and the applicant responded that Mr Sert would be helping out regarding purchases from wholesalers but would not have day to day control. He would still be involved, this being a husband and wife business but would not be managing the premises.

Decision of the Licensing Sub-Committee

The application was refused.

Reasons for the Councillors decision

The Councillors took account of the s182 National Guidance and their Local Guidance as well as the matters raised before them and the written representations.

They were very concerned regarding the proposed management of these premises from the point of view of promotion of the licensing objectives. It was not in dispute that the sale of alcohol to children was a significant breach of the licensing objectives.

The management of the premises at the time of the decision by the Norwich Magistrates Court Licensing Bench that the licensing objectives could only be upheld by the revocation of the premises licence involved both Mr and Mrs Sert. Mrs Sert had been the designated premises supervisor at that stage. The Norwich Magistrates Court had heard evidence from a local resident in respect of concerns regarding underage sales and this evidence was valid as at the date of the magistrates' court appeal hearing, rather than at the date of the committee hearing. The evidence of the local resident Mrs Cochrane therefore related in part to a period when Mrs Sert had been designated premises supervisor and involved in the management of the premises as well as Mr Sert.

The councillors primary concern was that Mr Sert would still be involved in the management of the premises albeit less directly than previously and noted the significant problems in respect of his behaviour noted both by the previous licensing sub-committee and by the Norwich Magistrates Court. Councillors were not satisfied that the management structure was sufficient to uphold the licensing objectives, due to the likely influence of Mr Sert upon the running of these premises.

The councillors concerns with the management of the premises were so significant that even the proposed conditions were felt likely to be insufficient to uphold the licensing objectives due to concerns regarding whether they would be upheld.

The councillors gave weight to the concerns of Trading Standards and the Norfolk Constabulary that the controlling mind at this business was likely to remain that of Mr Sert.

Noting that the premises had a store room, there was no adequate explanation as to why alcohol was on display in the retail area of these premises during the morning site visit and this indicated at best poor management control.

Right of the party to appeal against the decision of the Licensing Sub-Committee.

For your information, applicants and any persons who have made relevant representations who are aggrieved by the decision or the imposition of any condition, term or restriction, may within 21 days of the date on which they receive notification of the decision, appeal to the magistrates court.

Dated this 17th April 2014

Posted this April 2014.