



Report of the Assistant Chief Executive (Corporate Governance)

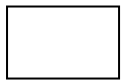
Licensing Committee

Date: 20 July 2010

Subject: **Bargain Booze (Mr John Warke) 7 Cross Hills, Kippax, Leeds – Appeal against Licensing Committee decision to refuse a Premises Licence**

Electoral Wards Affected:

Kippax and Methley



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This Report advises Members of the outcome of an appeal by Mr John Warke against a decision of the Licensing Sub Committee sitting on 4 January 2010. After considering the application, representations and evidence, the Committee decided to refuse the premises licence. Mr Warke appealed against that decision and the appeal was determined by Leeds District Magistrates' Court on 30 April 2010. Following advice from Counsel instructed for Leeds City Council (Mr John Hunter of Kings Chambers, Manchester) the appeal was disposed of by consent between the parties, and premises licence was granted. Costs of £4700 were awarded against the Council.

1.0 Purpose of this report

- 1.1 The purpose of this report is to advise Members of the outcome of the appeal of Mr John Warke.

2.0 Background information

- 2.1 Mr John Warke applied for a Premises Licence for premises situated at 7 Crosshills, Kippax, Leeds LS25 7JP. The application was for the supply of alcohol everyday from 8 am to 11pm, for consumption off the premises only.
- 2.2 West Yorkshire Police, as a responsible authority, had discussions with the applicant prior to the licensing committee hearing and reached agreement about relevant conditions which they felt would promote the Licensing objectives.
- 2.3 The Licensing Committee heard objections to the grant of the licence from Councillor Keith Wakefield and Councillor James Lewis, who spoke on behalf of residents who had made written representations, and also from Mr James Armstrong who was also a local resident.
- 2.4 The Licensing Committee heard representations from Gill Sherratt on behalf of Mr John Warke in support of the application.
- 2.5 The Committee noted the existence of a Designated Public Place Order (DPPO) which had recently been introduced into Kippax because of concerns about alcohol related anti-social behaviour in the area.
- 2.6 After consideration of the application and the representations made, the Licensing Committee decided to decline to grant a Premises Licence on the grounds that it would undermine the Licensing objectives of prevention of public nuisance, crime and disorder and the protection of children from harm. It was felt that despite the conditions proposed by the applicant that granting the licence would exacerbate the existing problems. An appeal was lodged against that decision.

3.0 Main issues

- 3.1 The appeal was settled by way of a consent order agreed between the parties following advice from Counsel.
- 3.2 Mr Warke based his appeal on two grounds; firstly that the way in which the committee conducted itself was unlawful and breached the human rights of Mr Warke, and secondly that the committee had taken into account irrelevant considerations, in particular whether the grant of the licence would exacerbate the prevailing conditions in Kippax.
- 3.3 Advice from Counsel was that Mr Warke was unlikely to succeed on the first ground. The procedure adopted by the Licensing committee was lawful and at this stage the Human Rights Act 1998 was not engaged as Mr Warke did not have any "property" – the Premises Licence – of which he could be deprived.
- 3.4 Advice from Counsel on the second ground was that Mr Warke was likely to succeed as it appeared that the Licensing committee had given undue weight to the evidence which led to the granting of the DPPO, and other representations had

related to planning issues (such as parking and the proximity to a home for the elderly) which were not within the remit of the Licensing committee.

- 3.5 The advice from Counsel was therefore followed and a consent order was agreed between the parties to settle the matter.

4.0 Implications for council policy and governance

- 4.1 Counsel suggested that Members had given undue weight .to irrelevant factors. Members have already been trained in relation to sub committee hearings however there is some update training scheduled for Autumn 2010. Officers suggest that that training include scenarios around relevant representations and in particular on planning and licensing factors for further discussion.

5.0 Legal and resource implications

- 5.1 The Court awarded Mr Warke his legal costs against Leeds City Council.

6.0 Conclusions

- 6.1 That sub committees ensure that decisions are made on relevant licensing considerations .

7.0 Recommendations

- 7.1 That Members note the contents of this report.