



Report of the Director of Legal and Democratic Services

Licensing Committee

Date: 6 February 2007

Subject: Sports Cafe Group Ltd – appeal against Licensing Committee decision on review

Electoral wards affected:

City and Holbeck

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Executive Summary

1. This Report advises Members of the outcome of an Appeal by the Sports Cafe Group Ltd against the decision of the Licensing Committee sitting on a Review Hearing in June 2006. The review had been requested by West Yorkshire Police following three failed test purchase operations between November 2005 and May 2006. After considering the evidence, the Committee decided to impose additional Conditions upon the Licence and a two week suspension of the licence. The matter was considered by Leeds Magistrates' Court on 2 & 3 January 2007. The Magistrates substituted their own decision for that of the Licensing Committee by confirming the Conditions imposed by the Committee but removing the two week suspension. The Report discusses the issues highlighted by the decision of the Magistrates and offers suggestions for both Members and Officers for future decision making.

1.0 Purpose of this report

1.1 The purpose of this Report is to advise Members of the decision of the Leeds Magistrates in relation to an appeal against a decision of the Licensing Committee on a Review Hearing.

2.0 Background information

2.1 Members will recall that on Tuesday 27 June 2006, a Review Hearing took place in relation to the Sports Cafe in Leeds City Centre. The review had been requested by West Yorkshire Police, who had carried out test purchase operations to establish whether any city centre premises were involved in the sale of alcohol to those who are under-age. The Sports Cafe had been subject to test purchase operations on between November 2005 and May 2006. Whilst one such operation had resulted in a refusal of sale, three successful test purchases had been made, thus sparking the review request.

2.2 The review took the form of a fully contested Hearing. After considering all the evidence and hearing all the submissions, the Committee decided that the management and supervision of staff at the premises was not strong enough and that action was needed to address the problem. The Committee also felt that staff at the premises had not been sufficiently trained to recognise potential under-age drinkers, and that training had not been prioritised after the first failed test purchase. The Committee imposed the following conditions:

- Door staff to be employed at the following times:
 - at all times the premises are open to the public on Friday, Saturday and Sunday
 - 1600 hours until close Monday to Thursday
- No under 18s allowed in the premises unless taking a meal within the restaurant

Members also decided to suspend the Licence for a period of two weeks. The suspension was expressed to be appropriate in order for the new conditions to be put into place. During this time, all staff and management associated with the premises were to be re-trained, with particular emphasis on the concerns raised by West Yorkshire Police and West Yorkshire Trading Standards.

2.3 The company exercised its right of appeal to the Magistrates in respect of the Committee's decision. The appeal was only in relation to the suspension of the licence and not the conditions.

3.0 Main issues

3.1 Initially, the company sought to compromise the matter by saying that the re-training required by the Committee had already taken place, and that the new Conditions were already been adhered to. In those circumstances, the company felt the suspension was unnecessary. However, at that stage, information being received from West Yorkshire Police and Leeds City Council Entertainment Licensing Enforcement Team indicated that there were still ongoing issues at the premises. During a multi-agency visit in September 2006, the Police checked on an individual who appeared to be under-age. Subsequent enquiries identified that that individual was aged 17. He did admit to the Police having purchased alcohol at the Sports Cafe. For those reasons, the Council decided to continue with its response to the appeal and allow the Magistrates to make their decision.

- 3.2 The matter came to a Hearing before the Leeds Magistrates' Court on 2 & 3 January 2007. A copy of the Judgment of the Court is attached as Appendix 1 to this Report. Essentially, the decision of the Magistrates was to approve the Conditions imposed by the Licensing Committee, but to remove the suspension, as they did not feel it was necessary to promote the licensing objectives.
- 3.3 In making this decision, the Magistrates were told that since the incident in September 2006, the door security company had been replaced. Additionally, they were told that the previous Designated Premises Supervisor was no longer working at the Leeds venue, and that a new Designated Premises Supervisor had recently been employed at the Leeds venue. The Magistrates had the opportunity of hearing evidence from this individual, as well as from the Licensing Consultant employed to re-train the staff and monitor staff training, and the Regional Manager.
- 3.4 In removing the suspension, the Magistrates had particular regard to the fact that the decision could not take effect until 21 days after the receipt of the decision letter. The conditions required and the staff training were all achievable within that 21 day timescale, and as such the Magistrates did not consider there was a need to suspend the Licence for those purposes. The Magistrates did note that the guidance makes provision for suspension of a Licence as a deterrent (paragraph 5.111), but noted that the decision letter made no reference to that being the intention of Members. In those circumstances, the Court did not consider it proportionate to impose a two week suspension, either when the Committee dealt with the matter or alternatively as at January 2007.

4.0 Implications for council policy and governance

- 4.1 The decision of the Magistrates' Court draws the attention of Members and Officers to the effects of the provisions of the Licensing Act 2003 in these circumstances. When considering whether to suspend a Licence, Members have been informed by the Committee Report that they must consider it necessary to suspend a Licence in order to promote one or more of the Licensing objectives. It is clear in this particular case that Members took that advice on board when imposing the suspension, and justified that by indicating that it would allow for a period of staff re-training and for the changes to the Conditions to take effect. Members' attention was not specifically drawn to the opportunity to impose a suspension of a Licence as a deterrent.
- 4.2 However, in framing the decision that way, the Council failed to have regard to the fact that the decision would not take effect until either the expiry of the 21 day appeal period or the determination of the appeal, whichever is the later. If Members choose to suspend a Licence for the purpose of re-training or allowing additional Conditions to be put into place, then they should consider how long it will take to achieve these objectives. If it will take less than the 21 day appeal period, then a suspension is likely to be unnecessary. Members also need to be aware that where an appeal is submitted within the 21 day period, the matter will ultimately be judged as at the date of the appeal.

5.0 Legal and resource implications

- 5.1 The Licence holder has a right to appeal under the Licensing Act 2003 on matters of fact or law. The Act also provides that the decision will not take effect until expiry of either the appeal period or the determination of the appeal, whichever is later. There are no implications for the Council in terms of having its decision changed on appeal.

5.2 No application was made for costs against the Council. However, the Council did incur costs in defending the appeal, which will not be reimbursed by the Appellant.

6.0 Conclusions

6.1 The case highlights the inter-relationship between determining what is necessary when dealing with a review application and the statutory provisions on appeal. As a result, it is recommended that Officers re-draft the template Report to draw Members' attention specifically to the appeal provisions and their impact, and to the provisions on determining whether a suspension is necessary by way of deterrent.

7.0 Recommendations

7.1 That Members note the contents of this Report.

7.2 That Officers be instructed to re-draft the template Report for Review Hearings.