



Leeds
CITY COUNCIL

Agenda item:

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Report of the City Solicitor

Licensing Committee

Date: 28th June 2011

Subject: The Streets of Leeds, Licensing Act 2003 Magistrates Court Appeal

Electoral wards affected:
Roundhay

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 Thomas Brisbane against a decision of the licensing sub-committee after an expedited review. The report sets out the background to the review and the subsequent appeal before summarising the decision of the Magistrates Court.

1.0 Purpose of this report

- 1.1 The purpose of this report is to provide Members with the outcome of the unsuccessful appeal of Mr Thomas George Brisbane against the decision of the licensing sub-committee.

2.0 Background information

- 2.1 Thomas George Brisbane was the premise licence holder of the premise known as The Streets of Leeds, Street Lane, Roundhay, Leeds, LS8 1AP. These premises benefited from a licence authorising the sale of alcohol, the provision of regulated entertainment and late night refreshment.
- 2.2 The Council considered an application by West Yorkshire Police under Section 53A of the Licensing Act 2003 to review the premise licence. This was an expedited review. They considered that the licensed premise was associated with serious crime and serious disorder. West Yorkshire Police had attempted to engage with the premise in order to allow it to promote the crime prevention objective after the premise began to score highly on the scoring matrix.
- 2.3 On 23 June 2010 the licensing sub-committee considered whether or not the licence should be suspended pending the full review at an interim steps hearing. Members heard that on 23 May 2010, drugs and drug paraphernalia had been recovered from the living quarters above the public house. The then designated premise supervisor, Nicola Brisbane, and daughter of the premise licensed holder, resided here with her boyfriend Jermaine McCleary.
- 2.4 It was this discovery, in combination with intelligence on drug use and minor crime at the premise, which had sparked the expedited review. West Yorkshire Police expressed their grave concerns about the DPS and her relationship with Jermaine McCleary. Not least because Mr McCleary had served prison sentences for drug supply of both Class A and Class B drugs and continued to be associated with the supply of drugs.
- 2.5 At the full review hearing Members heard more about the failure of the premise to promote the crime prevention objective, its links to drug use, minor disorder and crime.
- 2.6 Against this background Members decided to revoke the premise licence. Members concluded on that day that they preferred the evidence of West Yorkshire Police and that the premise licence holder had not taken any responsibility for the running of the premise even after the intervention of the police.
- 2.7 Members further concluded that Nicola Brisbane was involved with Mr McCleary at the expense of the licensing objectives. Members concluded that of the options available to them on review, revocation was the only reasonable one.
- 2.8 Mr Brisbane appealed this decision. His lawyers argued that the revocation of his licence was disproportionate, unnecessary and contrary to the evidence that Members had heard at the review.

3.0 Main issues

- 3.1 The Appeal was determined by the Magistrates Court following a two day hearing in April 2011. The Court heard evidence from West Yorkshire Police. The premise called evidence from the premise licence holder, the DPS and her staff. The Magistrates had to consider whether or not the council's decision was wrong taking into account the reasons given for the decision and the evidence given in the appeal.
- 3.2 The Court heard that since the review the premise had continued to undermine the licensing objectives. It continued to be linked to drug supply, drug use and stolen goods. The premise argued that the relationship between the DPS and Mr McCleary did not impact upon the manner in which the premise was operated and/or that current staff at the premise could be promoted to the DPS role, in order to take the premise forward.
- 3.3 At no time during the hearing did the premise offer any conditions to address issues at the premises. During the progress of the appeal it became clear that those running the premise did not have a cogent plan for taking it forward and often failed to communicate between themselves.
- 3.4 The Court dismissed Mr Brisbanes's appeal. In reaching this conclusion the Magistrates gave a comprehensive set of reasons. In summary, the Magistrates accepted that the premise had attempted to address the drugs problems there but only to a certain degree. They felt that there was a lack commitment to those managing the premise to its own drugs policy and this was caused by lack of acceptance of the grave nature of the situation.
- 3.5 The Court refused to believe that the DPS was unaware of the existence of the drugs and drugs paraphernalia found in the living quarters above the public house or drugs later found at a further address that Mr McCleary had stayed at.
- 3.6 The Magistrates' agreed that Mr McCleary had an undue influence over Nicola Brisbane, they refused to accept that what happened in her private life was separate from her professional life. They emphasised that as the DPS of a licensed premise she was under certain duties and this was compromised by her relationship with a convicted drug dealer.
- 3.7 The Court were also at a loss to see how she could put the promotion of the licensing objectives first in this situation. The Court could not find the decision of the licensing committee wrong. Costs were awarded to the council as a result.

4.0 Implications for council policy and governance

- 4.1 There are no significant implications identified.

5.0 Legal and resource implications

- 5.1 The Court awarded the council its legal costs against Mr Brisbane. The costs remain outstanding and will be subject to debt recovery action.
- 5.2 Any costs recovered will be allocated to the budget of the Entertainment Licensing Section.

6.0 Conclusions

- 6.1 The result of this appeal hi-lights the importance of giving reasons for a decision. The Court were told the council's decision was wrong and Members had concentrated on irrelevant matters.
- 6.2 However, the detailed reasons Members gave for their decision allowed the appeal to be defended successfully. The Magistrates' were clear on why the council had acted as it had and concluded this decision was not wrong.

7.0 Recommendations

- 7.1 Members are invited to note the contents of this report.