

## Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Thursday, 5th June, 2008.

**Present:** Cllr Alan Lewis, Cllr Maurice Perry and Cllr Bill Woodhead.

**Officers:** M Vaines, J Jones (DNS); J Nertney (LD).

**Also in attendance:** PC Sue Icton, PC Leek (represented by Miss Lamballe, Barrister), Mr Nath, (Premises Licence Holder & Designated Premises Supervisor), Mr Kumar (represented by Mr Catterall, Solicitor).

**Apologies:** None.

### **LSC 13/08 Appointment of Chairman**

RESOLVED that Councillor Woodhead be appointed Chairman for this meeting only.

### **LSC 14/08 Declarations of Interest**

There were no interests declared.

### **LSC 15/08 Costcutters/Lanehouse Road Convenience Store, 118 Lanehouse Road, Thornaby - Application for Review of a Premise Licence under the Licensing Act 2003.**

The Chairman introduced all persons who were present and explained the procedure to be followed during the hearing.

A copy of the report and witness statements had been provided to all those persons present and to members of the Committee. Members noted that this review of a premises licence was made at the request of Cleveland Police. Relevant representations had also been received from Trading Standards and the Local Safeguarding Children Board.

Miss Lamballe, Barrister, represented Cleveland Police and stated that the Police had continuing concerns as there had been two successful test purchases when staff at the premise had sold alcohol to persons under age. This occurred despite the Premises Licence Holder and DPS been provided with two copies of guidance and training packs aimed at assisting companies in combating and addressing under age sales.

In the Polices view Members should give consideration to revoking the licence or removing the Designated Premises Supervisor (DPS).

Miss Lamballe called evidence from PC Icton who stated that Mr Ferguson as the DPS had been sent a warning letter by the Police advising him of the under age sales and his responsibilities as manager of the premise and DPS. The test purchases were undertaken in November 2007 and January 2008 when persons under age were served by two different members of staff who were each dealt with by been issued with Fixed Penalty Notices which had both been paid. PC Icton stated that Stockton Trading Standards had delivered a training package entitled "We Don't Overlook Underage" to the premises on 6th

November 2007. Despite this a member of staff sold alcohol to an under age test purchaser on 8th November 2007. Cleveland Police hand delivered a further copy of this training package to the premises on 16th November 2007. On 31st January 2008 a further test purchasing exercise was carried out when another member of staff sold alcohol to two test purchasers aged 15 and 16.

The only proactive steps taken by the Premises Licence Holder and DPS had occurred after the review process had been commenced and this was a matter of concern for the Police.

Mr Catterall was invited to ask questions of PC Iceton. Mr Catterall indicated that he did not have any questions.

Mr Jones on behalf of Trading Standards stated that they supported the Polices application as it was totally unacceptable to have two under age sales at the premise. Mr Jones stated that they would suggest that at the very lest conditions should be attached to the Licence such as:-

1. All staff will insist on evidence of age from any person appearing to be under 21 years of age and who is attempting to buy alcohol or other age restricted product (specify).
2. All staff will be trained with regard to the law relating to the sale of age restricted products. Staff will be re-trained at least every 3 months.
3. Training records, signed by both the staff member and the proprietor will be retained for future reference and shall be updated at least every 3 months. All staff training records will be made available to enforcement agencies upon request.
4. The business will maintain a refusals book to record all instances where the sale of age restricted products have been refused. This shall include the date and time of the attempted sale, together with a description of the incident. The Designated Premise Supervisor/Store Manager/Business Owner will sign each page.
5. CCTV recordings will be maintained for a period of 30 days and will be made available for inspection by the Responsible Authorities.

As there was no one in attendance from the Local Safeguarding Children Board Members noted the representation which had been received supporting the Polices application for the Review.

Mr Catterall informed Members that he represented Mr Nath, the Premises Licence Holder and Designated Premises Supervisor.

Mr Catterall stated that Mr Nath and Mr Kumar were brothers and they purchased Costcutters approximately 25 years ago. They employ 13 local people from Thornaby some of whom have worked for them for many years.

Mr Nath had never been in trouble with the authorities.

Mr Catterall produced copies of letters from the two members of staff who had

sold the alcohol, namely Mrs Leeming and Mrs Sewell.

Mr Catterall accepted that at the time of the test purchases his clients did not have the required measures in place but they had now and he cannot see what further steps they can take to assure the Committee that this will not happen again.

Mr Catterall produced a bundle of documents with photographs and exhibits in support of his client and character references from Dari Taylor MP and Councillor Trainer, Mr Nath's Ward Councillor.

Mr Catterall stated that alcohol sales were a crucial part of his clients business. His clients had taken this procedure very seriously and had done everything they possibly could to assure Members of their character and ability to run the premises in future to the required standard. Mr Catterall stated that his clients were considering installing new fingerprint technology to combat under age sales.

At the request of Members Mr Catterall produced a number of training records and logs which had been introduced at the premises.

In response to the character reference from Dari Taylor MP, the Police representative submitted to Members a report of a speech given by Gordon Brown suggesting that persons who had two under age sales should lose their licence.

In considering their decision Members had regard to the evidence which had been presented to them. Members also had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

It was noted that the main evidence put before Members was based on the two under age sales that had taken place at the premise.

Members considered whether Mr Nath should be removed as the DPS. Members were concerned that while Mr Nath was the DPS two under age sales had taken place at the premise. Mr Nath had been informed of the first sale and there was no evidence put before Members to show that Mr Nath had taken any proactive action to prevent any further sale. It was accepted that since Mr Nath had received professional legal advice from Mr Catterall there had been a vast improvement at the premises. Mr Catterall had provided a bundle of documents detailing the numbers of methods which were now in place to prevent and address further problems of under age sales. However Members had serious concerns that Mr Nath may be merely paying lip service to the measures which had been introduced. Mr Nath's employees had both taken the blame for the individual sales but there was no evidence presented to show that Mr Nath had been proactive in dealing with the concerns of the Police until the review process had started and he had received appropriate legal advice. It was apparent that even though Mr Nath submitted documents in support of his position, such as the Refusals Register, there still seemed to be a lack of understanding on his part that the "buck stopped with him". For example even though the Refusals book had detailed instructions on the front for how the manager/DPS should deal with the procedure he had still failed to follow

appropriate steps i.e. the Refusals Book had not been signed off by him. Members felt that this was an example of Mr Nath introducing or having procedures but not having a full understanding of their importance or of his obligations in respect to his premise. As the Designated Premises Supervisor Mr Nath had responsibility for managing the premises and clearly had a responsibility to ensure that underage sales did not occur and that the condition were not breached. The Section 182 Guidance was quite clear that the Committee could "remove the DPS .... Because they consider that the problems are the result of bad management". After considering all of the evidence Members unanimously concluded that there was sufficient reasonable justification to remove Mr Nath as Designated Premises Supervisor.

In considering this matter Members unanimously agreed that because of the seriousness of two underage sales at the premise they felt it essential to impose a sanction against the premise. Members noted that they had the power under the legislation to revoke the licence or suspend for a period of up to three months. Members did not feel that revocation of the premises licence would be an appropriate sanction at this time as following the provision of legal advice from Mr Catterall numerous procedures and improvements had taken place at the premise to ensure that their legal obligations were fulfilled. Members therefore gave consideration to suspending the licence for a period of time. Members weighed up the potential impact on the premise and after giving due consideration they unanimously agreed that the Premises Licence be suspended for a period of 21 days. It was therefore felt appropriate that a short suspension of 21 days was proportionate and would give Mr Nath sufficient time to identify a new DPS and deal with the relevant paperwork with the licensing authority. Members noted that if significant improvements to the running of the premise did not occur then the Premises Licence would clearly be at risk of revocation should there be any review application in the future.

The Committee also attached the following conditions:-

1. All staff will insist on evidence of age from any person appearing to be under 21 years of age and who is attempting to buy alcohol or other age restricted product (specify).
2. All staff will be trained with regard to the law relating to the sale of age restricted products. Staff will be re-trained at least every 3 months.
3. Training records, signed by both the staff member and the proprietor will be retained for future reference and shall be updated at least every 3 months. All staff training records will be made available to enforcement agencies upon request.
4. The business will maintain a refusals book to record all instances where the sale of age restricted products have been refused. This shall include the date and time of the attempted sale, together with a description of the incident. The Designated Premise Supervisor/Store Manager/Business Owner will sign each page to confirm that he has checked the register.
5. CCTV recordings will be maintained for a period of 30 days and will be made available for inspection by the Responsible Authorities.

RESOLVED that:

1. The Designated Premises Supervisor be removed.
2. The Premises Licence be suspended for a period of 21 days.
3. The conditions be attached as detailed above.