

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Monday, 23rd June, 2008.

Present: Cllr Alan Lewis, Cllr Mrs Kath Nelson and Cllr Bill Woodhead.

Officers: C Barnes, J Jones, F Russell (DNS); J Nertney (LD).

Also in attendance: PC Johnson (represented by Mrs Nevison, Solicitor), Also in attendance PC Iceton

Respondent: Mr Darby - Premises Licence Holder & Designated Premises Supervisor (represented by Mr Clive Harvard, Solicitor). Also in attendance Mrs Darby.

Persons Living in the: Mr Vaines was in attendance.

Apologies: None.

LSC 16/08 Appointment of Chairman

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

LSC 17/08 Declarations of Interest

No interests were declared.

LSC 18/08 Stockton Arms Hotel, Darlington Road, Stockton on Tees - Application for Review of a Premise Licence under the Licensing Act 2003.

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

A copy of the report and supporting documents and 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. Representations in support of the review had also been submitted by Trading Standards and from Mr Vaines who lives within the vicinity of the premises.

Mrs Nevison stated that the application for a review of the premises licence had been made as the premise had now had three positive test purchases for under age sales of alcohol. In 2007 two under age sales had taken place. The first occurred in May 2007 at approximately 19.45 hours. Four weeks later a second under age sale took place on 7th June 2007 at approximately 19.15 hours. Following this Cleveland Police had spoken to Mr Darby, the premises licence holder and Designated Premises Supervisor, and had agreed a number of voluntary conditions.

On 27th February 2008 a third under age sale took place at the premises at approximately 19.20 hours.

Mrs Nevison called oral evidence from PC Johnson.

Mr Johnson was cross-examined by Mr Harvard, Solicitor for the premises licence holder, the respondent in this matter.

The Committee then heard from Mr Jones on behalf of the Councils Trading Standards Section who had made a representation on the review. In summary Mr Jones stated that Trading Standards supported the Police application for a review of the premises licence and that they were also concerned that there had been three under age sales. Mr Jones stated that he noted from Mr Darby's statement that he claimed he had not received a training pack in relation to sales of age restricted products. Mr Jones stated that he had obtained a witness statement from Mr Francis Russell who had produced a schedule of visits made to premises where Designated Premises Supervisors were asked to sign to confirm receipt of the trading standards training pack. Mr Jones stated that Mr Darby had signed to confirm receipt of the training pack on 15th January 2008 which was a number of weeks before the third under age sale.

As this issue was in dispute Mr Russell attended to give evidence. Mr Russell explained that he had been doing visits to premises to distribute the age restricted product training packs. When he arrived at the premise Mr Darby was upstairs and he had to wait sometime for him to come to the bar area. While there Mr Russell looked around the premise and noted that the cigarette machine was not within sight of the bar and he intended to give advice to Mr Darby on that matter. When Mr Darby arrived in the bar area Mr Russell provided the necessary advice and handed a copy of the training pack to Mr Darby who signed to accept safe receipt.

Mr Jones stated that Mr Darby had evidence of measures he had taken to prevent sales of age restricted products but the concern was that these measures were not implemented appropriately. It was not just the paperwork that was important but how the staff were trained and that the management of premises continue to monitor to ensure that standards are maintained.

Mr Harvard cross examined Mr Jones and Mr Russell.

Mr Vaines was in attendance at the meeting and explained that the issues he was raising were not as serious as the underage sales. Mr Vaines made it clear that he was not seeking a revocation of the premises licence. However he believed that the management controls in place at the premises had not worked as he had continued to experience noise nuisance and disorder from persons leaving the premise.

Mr Harvard cross examined Mr Vaines.

Mr Harvard had provided a large bundle of documents in relation to his clients case. Mr Harvard stated that he represents Mr Darby who was both the premises licence holder and Designated Premises Supervisor. Mr Harvard stated that he had been impressed by the diligence of Mr and Mrs Darby in how they run their premises. Mr Harvard stated that Mr Darby had done everything reasonably expected of him to prevent any more under age sales at the premises. Mr Harvard referred Members to training records and other documents bringing these issues to the attention of his staff and of qualifications in licensing held by staff at the premises.

Mr Harvard stated that it should be noted that Mr Vaines was now the only local resident who raises any objection to the running of the premises and must go to show that the Darbys were doing something substantially right.

Mr Harvard then called evidence from Mr Darby, the Premises Licence Holder and the Designated Premises Supervisor.

Mr Darby stated that in relation to the visit to the premises by Mr Russell he did not recall receiving a training pack. Most of the time that Mr Russell was there was spent with discussing the issue over the location of the cigarette machine.

Mr Darby stated that since the last test purchase he had introduced the Challenge 21 policy and feels that this had now changed his clientele and there are fewer younger persons visiting the premises.

Mrs Nevison, on behalf of the Police, Mr Jones on behalf of Trading Standards and Mr Vaines were all given an opportunity to cross examine Mr Darby.

All parties present were given an opportunity to sum up their case.

In considering their decision Members had regard to the evidence which had been presented to them in both written and oral form from the witnesses and representatives. The Committee also had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

It was clear that the Premises Licence Holder had introduced a number of procedures and had documentation showing due diligence. It was of some concern to Members that these measures had been reactive rather than proactive. However the fact remained that Mr Darby had taken efforts to ensure that further under age sales will not occur.

Members gave consideration to whether Mr Darby should be removed as the DPS. Members agreed that this would be premature at this stage as they felt that the training and measures introduced by Mr Darby showed that he was making strenuous efforts to ensure that further issues which were of concern to responsible authorities did not occur in the future. Mr Darby should be in no doubt that Members and for that matter all responsible authorities would expect Mr Darby to maintain his diligent approach and continue to train his staff to ensure that all the training was embedded and that further under age sales do not occur.

Although Members did not feel removal of the DPS was appropriate at this time the Members were conscious that this was an extremely serious matter and they gave serious consideration to the revocation of the premises licence. Three under age sales at an individual premise could, in Members view, reasonably lead to the revocation of a premises licence. However in balance and considering all the evidence Members did not feel it would be appropriate to revoke the licence at this time.

Members were aware that they had the power to suspend for a period of up to three months. It was therefore felt appropriate that a short suspension of 14 days in relation to the supply of alcohol on and off the premises was

proportionate and would serve to demonstrate that this was a serious matter and that it should serve as a deterrent to other premises. Members balanced their decision to suspend the supply of alcohol against the potential financial impact for Mr and Mrs Darby. Members agreed that this was proportionate as Mr and Mrs Darby could still serve food and soft drinks at their premise if they so wished and could continue with their letting of rooms.

RESOLVED that:-

- The licensable activity of the supply of alcohol for consumption on and off the premises shall be suspended for a period of 14 days.

- In addition the Committee resolved that the following conditions should be attached to the licence:-

1. A Challenge 21 Policy will be implemented with all staff insisting 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 products.

2. All staff will be trained with regard to the law relating to the sale of age restricted products. Staff will receive re-training at least every three months.

3. Training records, signed by both the staff member and the Designated Premises Supervisor and/or the Premises Licence Holder will be retained for future reference and shall be updated at least every three months. All staff training records will be made available to enforcement agencies and/or responsible authorities on 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 Premises Supervisor and/or the Premises Licence Holder will check and sign each page and the refusals book shall be made available enforcement agencies and/or responsible authorities on request.

5. A bound hard backed incident book should be maintained at the premises which should include details of incidents, time and date and any action taken as a result. This should be maintained at the premise and be made available to enforcement agencies and/or responsible authorities on request.

6. CCTV recordings will be kept in secure storage for a period of 30 days and be made available to enforcement agencies and/or responsible authorities on request.

7. On the closing of the premises the Designated Premises Supervisor or a member of their staff will take all reasonable steps to ensure that groups of people do not remain congregated outside the premises.

8. All reasonable steps and regular monitoring by the Designated Premises Supervisor and their staff shall take place to ensure that customers entering and leaving the premises do so in an orderly manner so as not to cause disturbance

to nearby residential properties or annoyance to people passing the premises.