

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Wednesday, 5th November, 2008.

Present: Cllr Cains, Cllr Dixon, Cllr Salt

Officers: M. Vaines, C. Snowdon, J. Jones (DNS), J. Nertney (LD)

Also in attendance: PC Icton (represented by Miss Lamballe, Barrister) Mr Hall (Person living within vicinity of premise) Mr Docherty (Person supporting the premise) Mr Shield on behalf of Barracuda the Premises Licence Holder, Mr Neil Wright, Designated Premises Supervisor. Evidence was also called from Mr Cutsforth, Mrs O'Hare, Operations Manager for Hide Bars Limited.

Apologies:

LSC 40/08 Appointment of Chairman

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

LSC 41/08 Declarations of Interest

Councillor Dixon declared a personal and prejudicial interest as he was a close personal friend of one of the persons who had made a representation. He had therefore withdrawn from the meeting and the Committee sat as a panel of two.

**LSC 42/08 The Fairfield, Fairfield Road, Stockton-on-Tees
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 was a review of the premises licence made at the request of the Cleveland Police and supported by representations from the Councils Trading Standards Section, Environmental Health section and one local resident who lived within the vicinity of the premises. It was also noted that one person had submitted a representation in support of the premises.

Miss Lamballe on behalf of Cleveland Police explained that the application for a review of the premises licence had been made following three under age sales at the premise following test purchase operations. Test purchases on 10th May 2007 and 7th June 2007 had resulted in sales of alcohol to persons under the age of 18 years. The test purchasers who had attended the premise were 16 years of age. On 26th June 2008 two test purchasers aged 16 were served with two Bacardi and cokes. Following the first under age sale a warning letter was sent to the Premises Licence Holder and Designated Premises Supervisor (DPS) on 7th March 2008. It was confirmed that the two FPN's issued against the members of staff had been paid.

The DPS had also breached a condition of their licence by failing to attend Pub Watch on three occasions. It was noted that apologies had been received for one of these occasions but no apologies had been submitted for the two other

occasions and no explanation had been given for the DPS non attendance.

PC Iceton gave evidence on behalf of the Police and confirmed that in addition to the three failed Test Purchases the Police had also carried out five Test Purchases at the premise where sales had been refused by members of staff.

PC Iceton was cross-examined by Mr Shield, Solicitor for the premises licence holder, the respondent in this matter.

Mr Snowdon, on behalf of the Councils Environmental Health section stated that he had received complaints from Mr Hall who lives close to the premise regarding noise from customers outside the premise. Mr Snowdon accepted that he had not received any complaints for the past six months and it would appear that after benches were moved from one side of the premise that he resolved Mr Halls concerns.

Mr Snowdon was cross examined by Mr Shield, Solicitor for the premises licence holder, the respondent in this matter.

Mr Hall was in attendance and stated that he had been disturbed in the past by customers on an evening and he felt that DPS was slow to react to his complaints.

Mr Docherty stated that he was an ex police officer and a customer of the premise and he had seen occasions himself when sales had been refused so it did show that the premise was taking steps to ensure that under age sales did not occur.

Mr Jones on behalf of Trading Standards stated that they supported the review application and as a minimum would request that the Committee imposed conditions on the licence in line with the undertakings given by the Premises Licence Holder. Mr Jones noted the below conditions as being appropriate in the circumstances of the review:

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. The only acceptable evidence of age will be a valid photo identification confirming the purchaser's age, namely a passport, photo driving licence or PASS approved proof of age card such as a Validate Card, Portman Group Card or a Citizen Card.
3. 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.
4. Training records, signed by both the staff member and the Designated Premise Supervisor/Store Manager/Business Owner 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 and/or Responsible Authorities upon request.
5. 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 check and sign each page and the refusals book shall be made available to enforcement agencies and/or Responsible Authorities upon request.

6. The CCTV system or equipment will be maintained in operation at all times when the premise is trading and open to members of the public.

7. The CCTV recordings will be maintained and stored in a secure place for a period of at least 30 days and made available to enforcement authorities and/or Responsible Authorities upon request.

Mr Shield called evidence from Mr Cutsforth, the Operations Manager for Barracuda, and from Mrs O'Hare, Area manager for Barracuda. The Designated Premises Supervisor and his wife were also in attendance and gave evidence.

Mr Shield advised the Committee that Barracuda had taken this issue extremely seriously and had taken steps to ensure that wherever possible this did not occur again. However any system would occasionally have a failing. It was clear that staff who had sold under age had received training from the Premises Licence Holder and DPS and as such this was an aberration. The Committee had to consider whether the licensing objectives were being undermined or whether the improvements that had been introduced at the premise were sufficient to satisfy the Committee.

Mr Shield produced a bundle of papers to the Committee demonstrating Barracudas training systems and Mr Cutsforth also gave a presentation on the same.

Mr Cutsforth explained that the premises now operated a Challenge 25 policy and the Company would be willing to accept a condition to that effect being added to the licence.

Miss Lamballe, on behalf of the Police cross examined Mr Cutsforth and the other witnesses.

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 the Committee that these measures had to some extent been reactive rather than proactive. However the Premises Licence Holder was given credit for taking steps to ensure that further under age sales do not occur

It was totally unacceptable that three under age sales should take place at a premise and it was therefore clear that the systems operated by the premises

licence holder were flawed. However it was noted that active steps had been taken to ensure that training was embedded with their staff and additional training was being given. Although the Committee noted there was due diligence in place if that fails the ultimate responsibility rested with the premises licence holder and his licence was at risk of been revoked.

The Committee gave consideration to whether the DPS should be removed. The Committee agreed that this would not be appropriate in these circumstances as the potential flaws in the training of staff were also the responsibility of the premises licence holder. The DPS should be in no doubt that the Committee and for that matter all responsible authorities would expect him to maintain a diligent approach and continue to train the staff to ensure that all the training was embedded and that further under age sales did not occur. Should the DPS change then the Premises Licence Holder should ensure that any new DPS was informed of the previous history at the premise and that a copy of the decision letter they would receive following this meeting was brought to their attention. If there should be any further under age sales at the premises as a result of a failure in the training regime then the DPS could expect to be removed.

Although the Committee 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 one premise was particularly serious and could, in the Committees view, reasonably lead to the revocation of a premises licence. However in balance and considering all the evidence the Committee did not feel it would be appropriate to revoke the licence at this time. The Premises Licence Holder was given credit for taking the issue seriously and introducing improvements to their training regime and agreeing to accept further conditions being attached to the licence. It was noted that the Premises Licence Holder had indicated his acceptance of those conditions including a Challenge 25 policy.

The Committee 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 7 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. The Committee balanced their decision to suspend the supply of alcohol against the potential financial impact for the premises licence holder. A 7 day suspension was deemed to be proportionate given that this matter was deemed very serious and the Committee could have suspended for up to three months. The Committee agreed that this was proportionate as the premise could if they so wished continue to operate the remainder of their business but without the supply of alcohol.

The Committee agreed to attach several conditions to the licence.

The Committee also wished to draw to the premises licence attention by way of strong advice that consideration was given to implementing a system of checking their systems and practices by their own internal test purchasing system. The Committee were concerned that the only time the premises licence holder would know that their systems were failing was if the Police carried out a

successful test purchase operation. The Committee felt it was incumbent on the premises licence holder to take further steps in addition to the training to check whether their training was effective. It was not acceptable to rely on the Police. However the Committee were minded not to attach that as a condition and instead asked that this advice be brought to the attention of the premises licence holder and they hoped that this would be taken on board.

RESOLVED that:

- Suspend the supply of alcohol from the premises licence period of 7 days
- Attach the conditions as set out below:
 1. A Challenge 25 Policy will be implemented forthwith with all staff insisting on evidence of age from any person appearing to be under 25 years of age and who is attempting to buy alcohol or other age restricted products.
 2. The only acceptable evidence of age will be a valid photo identification confirming the purchaser's age, namely a passport, photo driving licence or PASS approved proof of age card such as a Validate Card, Portman Group Card or a Citizen Card.
 3. 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.
 4. Training records, signed by both the staff member and the Designated Premise Supervisor/Store Manager/Business Owner 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 and/or Responsible Authorities upon request.
 5. The business will maintain a system recording refusals for all instances where the sale of age restricted products have been refused. In addition to the current system of the refusals button the premises licence holder must ensure that a written record is kept of the date and time of the attempted sale, together with a description of the incident. The Designated Premise Supervisor/Store Manager/Business Owner will check and sign each page of the record of the details of the refusal. Any data, whether in written or electronic format, regarding refusals at the premise held by the premises licence holder shall be made available to enforcement agencies and/or Responsible Authorities upon request.
 6. The CCTV system or equipment will be maintained in operation at all times when the premise is trading and open to members of the public.
 7. The CCTV recordings will be maintained and stored in a secure place for a period of at least 30 days and made available to enforcement authorities and/or Responsible Authorities upon request.
 8. There shall be sufficient public notices erected at the premises to ensure that customers and staff are aware that the premise is operating a Challenge 25 policy.

It was also resolved to remove condition 6 under the prevention of public

nuisance and replace with the following conditions:-

9. Customers shall not be permitted to take drinks in open containers/vessels outside the premises after 22:30 except when using the designated drinking area (as identified on the plan) when this shall be permitted up until 23:00 hours. There shall be no music played in the external drinking area, and no use of flood lighting likely to cause a nuisance to local residential properties.

10. Use appropriate management controls to reduce the likelihood of customers causing disturbance to local residents when smoking outside the premises including, but not restricted to, taking all reasonable steps to ensure that customers who wish to smoke use the designated drinking area for that purpose after 22:30 hours