

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Thursday, 10th September, 2009.

Present: Cllr Dick Cains, Cllr Alan Lewis and Cllr Bill Woodhead.

Officers: J Nertney (LD); J Allwood, C Barnes, S Mills (DNS).

Also in attendance: Cleveland Police: PC Icton (represented by Miss Smith, Barrister at Law);

Respondent: Mr Russell - Premises Licence Holder & Designated Premises Supervisor (represented by Mr Clive Harvard, Solicitor). Also in attendance - Mr M B who was called as a witness by the Respondent.

Apologies: None.

**LSC
10/09** **Appointment of Chairman**

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

**LSC
11/09** **Declarations of Interest**

No interests were declared.

**LSC
12/09** **The Courtyard Hotel, Green Dragon Yard, 39A High Street, 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.

Mr Harvard, on behalf of the Respondent made a preliminary application to the Committee, namely:-

1. That Mr M B be allowed to give his evidence first as he had another appointment that he needed to attend urgently;
2. To introduce late evidence in the form of an incident book which was kept at the premises;
3. That leave be given to allow the Respondent to call a new witness who had not previously been notified to the Police and other parties.

Mr Harvard indicated he had recently obtained a witness statement from Miss B, a member of staff at the premise. He had not previously been aware that she could make relevant comments. Mr Harvard submitted that Miss B evidence was relevant as her initials appeared in the incident book. He could arrange for Miss B to attend at the Committee at short notice if required.

Miss Smith on behalf of the Police stated that they had no objections to the first two applications but objected to the third and felt that to allow a new witness to be called on the morning of the hearing was highly inappropriate. The Police had not been provided with a copy of any witness statement taken by Miss B and were therefore not in a position to respond to any evidence that she may give.

All parties withdrew while the Committee considered the application.

When the parties returned Members informed that they noted there were no objections to the first two applications and therefore Mr M B could give his evidence immediately and the incident book would be accepted as evidence and copies of the same were provided to the Members and all other persons present.

In relation to the application for Miss B to be called as a new witness Members refused that application as they found that Mr Russell had many weeks in which to prepare his case and, Mr Russell had been well aware of the Police concerns and allegations regarding his management of the premise, now witness statement had been taken from Miss B and even if it had not been circulated to the parties and it would not be in the interests to justice to agree to a new witness.

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 the Local Safeguarding Children Board.

Mr Harvard called evidence from Mr M B who had submitted a witness statement dated 29 August 2009.

Miss Smith cross examined Mr M B.

With regard the applicants submission Miss Smith stated that the application for a review of the premises licence had been made as the premise had now had two positive test purchases for under age sales of alcohol. These test purchases had occurred with two different members of staff. The Police were of the view that Mr Russell as the DPS and Premises Licence Holder had no control over the running of the premise.

Miss Smith called evidence from PC Iceton.

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

Mr Barnes, Licensing Enforcement Officer gave evidence in relation to his statement dated 15 July 2009. Mr Barnes was cross-examined by Mr Harvard, Solicitor for the premises licence holder, the respondent in this matter.

With regard the Trading Standards submission Miss Allwood stated that Trading Standards supported the Polices application for a review of the premises licence and that they were also concerned that there had been two under age sales.

Mr Harvard had no questions of Miss Allwood.

With regard the respondents submission Mr Harvard had provided witness statements from Mr Russell, Mr M B, a letter of support from the licensee of the

Jolly Farmers Public House and extracts from the incident book kept at the premise. Mr Harvard informed Members that he had provided advice to Mr Russell in the manner in which he should be undertaking training and keeping records for himself and his staff.

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

Miss Smith cross examined Mr Russell.

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. Members also had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

Members felt that it was clear that the Premises Licence Holder had been advised by Mr Harvard to introduce a number of procedures and documents. However the vast majority of practices and procedures at the premise had only occurred as a result of the review proceedings. Some of the procedures that had been introduced by Mr Russell prior to the review process were wholly inadequate and demonstrated the lack of knowledge and understanding of what was required from him. An example of this was the incident book which had been introduced as evidence. The manner in which the incident book had been implemented and used was totally unacceptable. This demonstrated that procedures and training implemented at the premise, if any, were wholly lacking and that this filtered down from senior management i.e. Mr Russell through other members of staff employed at the premise. The incident book itself served to demonstrate that there appeared to be a total lack of respect for the law and unfortunately for Mr Russell himself. There were incidents of staff drinking on duty and of arguments between staff members on and off duty. The incident book seemed to indicate that the running of the premises was shambolic to say the least. It was unbelievable that the respondent and his legal representative had relied on the incident book as an example of good practice when in fact the manner in which it was been used seemed to indicate the opposite.

Members were also concerned that Mr Russell had given evidence which would appear to deceive the Committee. Mr Russell in his statement and evidence indicated that Miss K W who had made the under age sale on 20th February 2009 had no authority to work behind the bar. Mr Russell stated that "she was not employed by him at the time although she had been 8-12 months previously". It was apparent from the incident log that Miss K W was working for Mr Russell after this incident as she appeared in the incident book on 27 April 2009. This indicated that at worst Mr Russell had mislead Members when implying that Miss K W was not working for him in February 2009 or alternatively Mr Russell had then chosen to employ Miss K W after she had made a positive test purchase in February 2009.

The evidence given by Mr M B who was called to support Mr Russell's case was also a matter of concern to Members as Mr M B confirmed that he had never heard of the Licensing Act 2003.

Although through advice from Mr Russell's legal representative it was apparent that recommendations had been made for improving practices and procedures it was also apparent that the advice had not yet been implemented and there seemed to be a lack of understanding as to when progress would actually be made at the premises.

Members took into consideration the mitigation submitted on behalf of Mr Russell including the character reference provided by the DPS of the Jolly Farmers. Members also noted Mr Russell's financial position as outlined by Mr Harvard.

Members gave consideration to whether Mr Russell should be removed as the Designated Premises Supervisor. Members agreed that it was wholly apparent that Mr Russell was totally inadequate to operate as the DPS. Members had little or no faith that if they allowed Mr Russell to remain as DPS that there would be any change in the management of the premise. Members expressed the view that any replacement DPS should not be any member of staff currently employed by Mr Russell or any member of staff who has been employed by Mr Russell over the period of the last 12 months. Evidence heard about existing members of staff was a cause of concern to Members. However it was noted that the Committee could not legally rule as to who could apply to be DPS and that it was the Police who had the right to object to an application to be named as DPS on a licence.

Although Members agreed to remove the DPS they also considered whether the premises licence should be revoked. Two 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 that this was the first application for a review of the premises licence Members did not feel it would be reasonable to revoke the licence at this time. However Mr Russell should be in no doubt that he was extremely fortunate that the premises licence was not revoked and that it was a borderline decision.

Members noted that they had the power to suspend for a period of up to three months. After considering mitigation and all of the evidence Members resolved that the premises licence be suspended for a period of 28 days. This was deemed to be proportionate given the seriousness of two underage sales and the catalogue of incidents and concerns over the premise. This suspension would serve to demonstrate that this was a serious matter and that it should serve as a deterrent to other premises. Members also noted that this would give sufficient time to allow Mr Russell to find and appoint a suitable qualified and experienced person who could act as DPS. Members balanced their decision to suspend the licence against the potential financial impact for Mr Russell and noted that Mr Russell also had the hotel business to run so that the suspension of the licence should not be catastrophic to Mr Russell's livelihood.

RESOLVED that:-

- The Designated Premises Supervisor (Mr Steven Michael Russell) will be removed.
- The premises licence shall be suspended for a period of 28 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. There shall be sufficient public notices displayed at the premise to inform customers and remind staff that the premise is operating a "Challenge 21" policy.

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 alcohol and also the operation of the "Challenge 21" policy. Staff will receive refresher training 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 which will be made available to the Licensing Authority and/or Responsible Authorities upon request.

6. There shall be adequate notices displayed on the premise indicating that the sale of alcohol to those under the age of 18 is illegal and that those adults who buy alcohol for immediate disposal to those under the age of 18 are committing an offence.

In addition to these new conditions the Committee also resolved that existing conditions on the licence be amended to read as follows:-

Existing Condition 6 be changed to read:-

• A drugs policy and drugs safe shall be maintained at the premises to the satisfaction of the Police. The drugs safe maintained at the premise shall be of a type where the DPS and Police both have access to a key and the safe can only be opened when both keys are used unless the Police confirm in writing that another form of drugs safe is acceptable to them.

Existing condition 9 shall be changed to read:-

• A procedure should be introduced to ensure that customers of the premise do not remove open vessels (including glasses and bottles) from the premises into Green Dragon Yard or beyond.

