

## Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Monday, 4th April, 2011.

**Present:** Cllr Dick Cains, Cllr Roy Rix and Cllr Bill Woodhead.

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

**Also in attendance:** Cleveland Police – PC Icton and Sergeant Daley in attendance (represented by Mr O'Brien, Barrister); Punch Taverns Plc - Mr Kevin Shears, Area Manager (represented by Mr Coen of Ford & Warren Solicitors); Mr Clark and Mr Paleschi – prospective purchasers of the premise.

**Apologies:** None.

**LSC 65/10 Appointment of Chairman**

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

**LSC 66/10 Declarations of Interest**

There were no interests declared.

**LSC 67/10 The Falcon, Harrowgate Lane, Stockton on Tees - Application for a Review of a Premise Licence under the Licensing Act 2003**

The Chairman introduced all person present and explained the procedure that would be followed.

A copy of the report and witness statements had been provided to all those persons present and to Members. 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 who were in support of the Polices review application.

Mr O'Brien on behalf of Cleveland Police stated that they were satisfied the licensing objectives were been undermined.

There had been two under age sales at the premises, one on 30th September 2010 and one on 27th January 2011.

In addition there had been a positive drugs result from a customer at the premise when the Police had visited. There were also reports of fighting at the premise.

PC Icton gave evidence and questions were asked by the representative of the premise licence holder and members of the Committee.

Miss Allwood on behalf of Trading Standards confirmed that the trading standards section supported the Police application. Mrs Allwood confirmed that trading standards were concerned that under age sales have taken place at the premise.

Mr Coen on behalf of the premise licence holder stated that the premise had

modest hours and that a large amount of money had been spent on the premises. It was accepted that the premises were located in a challenging area.

The premises were let by Punch taverns Plc to Mr Gallagher who became a tenant at will. This was not Punch taverns preferred means of letting a premise.

Punch taverns take these proceedings very seriously. The breaches of conditions highlighted by the Police were more modest breaches and they had been rectified by the premise licence holder.

Punch taverns believed that the correspondence from the Police indicated that they were satisfied with the progress that had been made at the premise when confirmation was sent confirming the conditions were now been complied with.

The premise licence holder apologised for the two test purchases. It was noted that the residents who lived near the premise 365 days of the year had not lodged a representation in relation to this review. It was apparent that the problems relate to poor management at the premise and Punch agreed to voluntarily close the premise. Punch had no intention of reopening the premise with the current DPS.

Punch hoped to sell the premise and the prospective purchasers were present at the meeting. They were not minded to exchange contracts with the threat of a review hanging over the premise.

Mr Shears was asked questions by the Polices representative and members of the Committee.

All parties were given an opportunity to sum up with Punch Taverns Plc's representative having the final submission.

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 evidence put before Members was based on the Crime and Disorder and Protection of Children from Harm licensing objectives.

Members were greatly concerned by the fact that the premise had two under age sales. However it was noted that these had taken place when the premise had been let to a tenant. It was, in the view of the Members, apparent that the changes in DPS had led to issues at the premise. However Members were strongly of the view that the premises licence holder could not abdicate his responsibilities by claiming he had let the premise to a tenant. The buck stopped with the premise licence holder. However Members were mindful that measures had been taken to address the issues and that it was hoped for the premises to be sold. Members therefore felt the revocation of the licence would be a step too far and perhaps too draconian in this instance. Should the premise remain in the ownership of Punch taverns they should be in doubt that further positive test purchases at the premise would be highly likely to result in the revocation of the licence.

Members noted that the Premises Licence Holder had confirmed that he was willing to attach a number of conditions to the Licence which would assist in improving standards at the premise.

It was noted that Mr Gallagher had submitted a letter indicating that he was no longer the DPS. However at this time the Licensing Authority had not received formal notification of this. Members therefore agreed to remove Mr Gallagher as DPS.

Members felt that suspension was appropriate in order to give the premise licence holder sufficient time to sell the premises or if this was not possible to arrange a further DPS and ensure that they were trained to the appropriate standard. It was noted that the premise licence holders representative had indicated a period of 4-6 weeks suspension would be appropriate. Members noted that the Act allowed for suspension for a period of up to three months. In considering all of the evidence the Committee deemed a period of two months to be fair and proportionate period of suspension.

Members also agreed to attach the following conditions 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. 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 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/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/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.

Members also agreed to remove conditions 2 and 3 of Annex 3 and replace them with the following conditions (for the avoidance of doubt conditions 1 and 4 of Annex 3 remain on the licence):-

1. A digital closed circuit Television System (CCTV) must be installed and maintained in good working order and be correctly time and date stamped. The system must incorporate sufficient built in hard drive capacity to suit the number

of cameras installed, whilst complying with Data Protection legislation. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition. Cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs. A minimum of 14 days recording is required. The system must have a minimum of a simplex multiplexing facility and be recording for 24 hours a day. The system must incorporate a means of transferring images from the hard drive to a format that can be played back on any desktop computer. The digital recorder must have the facility to be password protected to prevent unauthorised access, tampering, or deletion of images. There must be at all times a member of staff on duty who is trained in the use of the equipment and upon receipt of a request for footage from a governing body, such as Cleveland Police or any other responsible authority, be able to produce the footage within a reasonable time, e.g. 24 hours routine or less if urgently required for investigation of serious crime. In the event of technical failure of the CCTV equipment the premise licence holder/DPS must report the failure to Police on contact number 01642 302360 immediately.

2. A personal licence holder shall be on duty at all times when the premises operate for licensable activities.

3. An incident book shall be kept and maintained on the premises at all times. The book shall detailed in brief, incident of injury/ejection/refusals/drug misuse/seizure/age challenge. Such matters shall be timed, dated and signed by the author and produced to Police and any other responsible authority including the licensing authority on request.

RESOLVED that:-

1. Mr Gallagher be removed as the Designated Premises Supervisor.

2. The premises licence be suspended for a period of two months.

3. The above conditions be attached to the licence.