

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Tuesday, 14th June, 2011.

Present: Cllr Miss Tina Large, Cllr Maurice Perry and Cllr Bill Woodhead.

Officers: C Barnes (DNS); J Nertney (LD).

Also in attendance: Cleveland Police – PC Johnson and Sergeant Daley in attendance (represented by Mrs Nevison, Solicitor); Mr Sutherby and Miss O'Brien the Premises Licence Holders (represented by Mr Catterall, Solicitor).

Apologies: None.

LSC 7/11 Appointment of Chairman

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

LSC 8/11 Declarations of Interest

There were no declarations of interest.

LSC 9/11 Newmarket, 97-99 Yarm Road, Stockton on Tees - Application For Review of a Premise Licence under the Licensing Act 2003

The Chair 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 of the Committee. Members noted that this review of a premises licence was made at the request of Cleveland Police. A representation in support of the review had also been submitted by Trading Standards who were in support of the Polices review application.

Mrs Nevison 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 7th December 2010 when two 14 year old girls had been sold a bottle of Lambrini by a member of staff called. The Second under age sale took place on 8th April 2011 when two 15 year old boys had been sold 8 cans of lager by a member of staff who is the son of the DPS. Following the first under age sale in December 2010 Miss O'Brien (premises Licence Holder and DPS) was sent a warning letter which stressed the importance of training members of staff. The letter also warned that should there be any further under age sales then review proceedings would follow.

Evidence was called from PC Johnson. PC Johnson stated that the Police were concerned that the under age sales at the premise demonstrate that the premise was not complying with its mandatory conditions. A mandatory condition was introduced in October 2010 relating to premises been required to have an age verification policy.

No representative from Trading Standards was in attendance and Members noted the content of their representation which supported the Polices review of the licence and agreed that the licensing objectives were been undermined.

Mr Catterall on behalf of the premise licence holder stated that the premise had been in the ownership of Mr Sutherby for 25 years. Mr Catterall stated that the premise had a Challenge 25 policy and he accepted that this had failed by having two under age sales. Mr Catterall stated that following receipt of the warning letter they decided to only allow mature people to serve in the premise.

Mr Catterall stated that the premise had in house training and that new members of staff were supervised by Mr Sutherby or Miss O'Brien for the first month. The premise took action against both members of staff who made the under age sales and they were dismissed. Mr Catterall stated that the explanation given was that the two boys were very tall and he did not believe they were under age.

Mr Catterall produced the premise refusals register and letters from Camelot and Stockton Trading Standards confirming that they had passed test purchase operations in 2006. The Polices representative confirmed that they had no objection in Members having regard to these documents.

All parties were given an opportunity to sum up with Mr Catterall making the closing 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.

It was clear that prior to the two test purchases the Premises Licence Holder had little or no due diligence in relation to the training of their staff and had substantial failings in relation to the promotion of the licensing objectives. It was clear that the licensing objectives had been undermined by the premises licence holder.

Members noted that the premise licence holder had operated a refusals register and this document had been placed before Members in evidence. The operation of a refusals register was considered to be best practice and an example of due diligence. However the document presented to Members was not considered to be fit for purpose. The document was extremely shoddy and was falling apart. Although Members of staff were recording refusals for age restricted products the register was not been signed off by the manager at the end of each page. This had initially been done but for some unexplained reason the manager had stopped signing off the pages. In the opinion of Members this demonstrated a shoddy attitude by management to their legal obligations in demonstrating due diligence on this issue. Members were also concerned that there were no records of any training of staff at the premise. Members noted that the premise licence holders stated they trained staff by shadowing them and would only allow a new member of staff to work alone in the premise when they were

satisfied. There was no documentary evidence presented to show that staff had been trained in relation to sale of age restricted products. The fact that there had been two under age sales in a short period of time by two different members of staff showed that any training they did receive was lacking.

Members were greatly concerned by the fact that the premise had two under age sales. The warning after the first under age sale had not prompted the premise to take action or tighten up their training of staff or introduce any training documents or records. It was however noted that none of the under age sales had been made by the DPS or Premise Licence Holders. Members noted that the premise had passed test purchase operations by both Camelot and Stockton Trading Standards in 2006. Although this was of credit to the premise it was the view of Members that the premise had not continued with this progress given the two under age sales and that standards had fallen since 2006.

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 the licence had few conditions on at present. Members were therefore of the view that it was appropriate to attach conditions to the licence to address their concerns.

Members also gave consideration to whether Miss O'Brien should be removed as the DPS. After considering all of the issues Members felt that this was a situation where the removal of the DPS would have a positive impact on the operation of the premise. Members noted in particular paragraph 11.20 and 11.21 of the Section 182 Statutory Guidance that "poor management is a direct reflection of poor company practice or policy and the mere removal of the Designated Premises Supervisor may be an inadequate response to the problems presented". The responsibility for the failings at the premise was directly linked to Miss O'Brien as she was both premises licence holder and DPS. Members therefore felt that Miss O'Brien should be removed as the Designated Premises Supervisor. Members did consider the revocation of the licence but felt that the removal of the DPS was a proportionate response.

Members felt that a period of suspension was also appropriate given the wholesale failings at the premise and the fact that there had been two under age sales. A period of suspension would act as a deterrent showing the seriousness of allowing under age sales at a premise and would also allow a period of time for the premise licence holder to appoint and train a new DPS.

RESOLVED that:-

1. The Designated Premises Supervisor be removed.
2. The Premises Licence be suspended for a period of one calendar month.
3. The following conditions be attached to the licence:-
 1. A "Challenge 25" policy will be implemented 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. There shall be sufficient public notices displayed at the premise to inform customers and remind staff that the premise

is operating a 'Challenge 25' 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 age restricted products and also the operation of the 'Challenge 25' policy in relation to the sale of alcohol. 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 will be made available to the Licensing Authority 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. Notices shall be 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.