

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 29 November 2017.

PRESENT: Councillors J A Walker (Chair), L Lewis and D Rooney (substitute for Higgins)

ALSO IN ATTENDANCE: J McCluskey, Trading Standards - The Applicant
J Smith - Legal Representative on behalf of the Applicant and supporting Responsible Authorities
Sergeant P Higgins; PC E Price - Cleveland Police
F Helyer - Public Health
C Tweevey; G McCartney - HMRC
T Hodgkinson - Licensing

Respondents:-
S Yousuf
Kurien DPS
Mr Danci - PLH
Mr Gulbar - Landlord

OFFICERS: C Cunningham, J Dixon and S Wearing

APOLOGIES FOR ABSENCE An apology for absence was submitted on behalf of Councillor Higgins. It was noted that Councillor D Rooney would substitute for Councillor Higgins..

DECLARATIONS OF INTERESTS

There were no Declarations of Interest made by Members at this point in the meeting.

17/6 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - CM NEWS, 460 LINTHORPE ROAD, MIDDLESBROUGH, TS5 6JG, REF: OL/17/07**

This Item was deferred.

17/7 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - LIFESTYLE EXPRESS, 345 LINTHORPE ROAD, MIDDLESBROUGH, TS5 6AB, REF: OL/17/08**

Decision

1. The Committee considered an Application to Review the Premises Licence in relation to Lifestyle Express, 345 Linthorpe Road Middlesbrough, TS5 6AB ("the Premises") which authorises the off-sales of alcohol between 8.00am and 11.00pm Mondays to Saturdays and between 10.00am and 10.30pm on Sundays.

2. The Committee carefully considered the application and appendices; the representations of the applicant; Responsible Authorities and of the Premises Licence Holder and his representatives; the Licensing Act 2003 ("the Act"); Government Guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy ("the Policy") and the licensing objectives set out in the Act. The matter was considered on its own merits.

3. The Committee noted that after the hearing, it must, have regard to the application and any relevant representations, take any of the following steps as it considered appropriate for the promotion of the licensing objectives:-

Do nothing; issue a warning; remove, add or change the conditions on the Licence; exclude a licensable activity from the Licence; remove the Designated Premises Supervisor; suspend the Licence or revoke the Licence.

4. The Committee decided it was appropriate to **REVOKE** the Premises Licence for the sale of

alcohol at the Premises in order to promote the prevention of crime and disorder and in the interests of public safety.

5. The Applicant and the Responsible Authorities informed the Committee, in summary, of the following matters:-

6. That criminality and irresponsible management had occurred at the Premises. During a joint inspection with the Responsible Authorities and HMRC on 15 June 2017, HMRC seized alcohol for which no duty had been paid. That the stock seized could be around 40% but could not be sure. The alcohol seized was not purchased from a registered approved wholesaler. Invoices had been produced in relation to a portion of the stock. An additional invoice had been produced, however, this related to a store in Redcar, and the invoice was earlier than the date of production of the alcohol and, therefore, did not relate to the alcohol seized. There was no trail of the transfer of any goods from the Redcar Store to the Premises. As a result, the production chain of the alcohol could not be traced and, therefore, there was a risk that it was unsafe. It was confirmed that the alcohol was not tested as being counterfeit, however, the Committee was informed that the labels on the wine appeared to be misspelt which was an indicator that the wine could be counterfeit. The Committee was informed that in November 2017 when a further visit took place alcohol was on display upon which no duty had been paid. The Committee was informed that the alcohol seized was high strength, cheap alcohol. There had been a history of non-compliance with the conditions on the Licence and previous warnings had been given. That during an inspection a customer whom appeared vulnerable and had been previously been barred from the Premises was served alcohol and another person entered the Premises and took money out of the till. That the area where the premises was situated was subject to a Cumulative Impact Policy and there were alcohol-related problems in the area.

7. The Premises Licence Holder and his representatives, in summary, informed the Committee of the following:-

8. That the stock was taken from the Redcar Store when that store was sold and the purchaser could not afford the stock. That HMRC would not accept the invoices because they related to a different store. That they now understood that although they had invoices they had to show the trail from the Redcar Store to the Middlesbrough Store. The Premises Licence Holder stated that stock was purchased from cash and carry premises. The Premises Licence Holder informed the Committee that only 10% was seized. The Premises Licence Holder apologised for the errors and apologised for the Designated Premises Supervisor and his Partner's failures. That Part B of the Premises Licence was displayed in the shop on the visit in October 2017 and that CCTV had been working although being repaired. That the Premises was not responsible for all the crimes and problems in the area. The Premises Licence Holder informed the Committee he would remove the Designated Premises Supervisor from the store and engage responsible people to run the Premises. He confirmed new managers would comply with the requirements under the Licence and that he would welcome inspections and would undertake any training or other advice to improve the operation.

9. The Committee considered that alcohol on display at, and sold from, the Premises had no duty paid. The Committee could not be satisfied that the alcohol was purchased from a registered approved Wholesale Retailer which was a legal requirement. Alcohol purchased from an approved Wholesale Retailer would have had the duty paid. The Committee considered that the invoices related to stock in the previous store and could not be formally linked to the Middlesbrough store, but in any event the invoice pre-dated the date of production of the seized alcohol. The Committee could not be satisfied the amount of unlawful alcohol on display in comparison to other goods or lawful alcohol. However, the Committee did consider that a large amount of unlawful alcohol was seized on 15 June 2017 namely, 358 litres and that a large amount of duty was owed namely £709.00. The Committee was informed by the Applicant that these were criminal offences.

10. The Committee noted that information about the requirement to purchase alcohol through a registered approved Wholesale Retailer was supplied during a visit on 19 May 2017, prior to the visit by HMRC in June 2017. The Committee also considered that the seriousness of the matter was compounded because in November 2017 (shortly before this review hearing) on a

further visit by HMRC alcohol was still found to be on display for sale where no duty had been paid, despite previous information and a previous seizure and penalty levied. This alcohol could not have been purchased from a registered wholesale retailer because no duty had been paid. Therefore it considered that the promotion of the prevention of crime and disorder at the Premises was not being upheld as offences were continually being committed.

11. The following are factors which the Committee considered added to the seriousness of the problems at the Premises and were having a serious detrimental impact on the Licensing Objectives:-

12. The alcohol seized and much of the stock included high strength beers/lagers/ ciders. The Responsible Authorities stated that such alcohol was considered high risk because it was attractive to problem drinkers who then either caused harm to themselves or others or caused disorder, crime or nuisance. The Committee was informed that the alcohol sold and seized was cheap alcohol based on the unit price and strength.

13. The Committee noted that this was a general issue, that the sale of strong beer, lagers, cider was not prohibited by a condition on the licence nor was there a minimum price condition on the licence. However, the Committee considered that the fact the alcohol seized was high strength, high risk and cheap generally, aggravated the seriousness of the offences of selling alcohol from an unapproved source without duty being paid.

14. In addition the Committee was seriously concerned that HMRC advised during its inspection a customer who appeared to be in a vulnerable condition was asking for a single can of super strength beer/lager and that a member of staff informed the customer she was not allowed that but gave her a can of other lager instead. HMRC was then advised the customer was actually barred from the Premises.

15. The Committee considered the Premises Licence Holder allowed wholly irresponsible retailing of alcohol at his Premises in an area which had serious problems relating to problem drinkers and alcohol harms.

16. The Committee could not make any assumption about the actual safety of the alcohol, because HMRC confirmed it had not been tested as to its safety or whether it was counterfeit. However, HMRC informed the Committee that the labels on some of the bottles of wines at the premises had been misspelt. That this is a clear indicator that the alcohol may not be produced by whom it claimed. Normally producers would not have spelling mistakes on the labels of its products.

17. The Committee considered that it was extremely irresponsible of the Premises Licence Holder to purchase or allow purchases of alcohol from an unregistered, unapproved source without clear traceability to production as the Premises Licence Holder could not know for sure that the alcohol he was selling to the public was properly produced and safe. The Committee considered this was a potential serious public safety risk.

18. The Committee noted that Licensing Officers had visited the Premises on three occasions - in July 2014, October 2014 and on 10 October 2017 - and on each occasion Licensing conditions and rules were being breached. Three warnings had been issued to the Designated Premises Supervisor and the Premises Licence Holder. A breach of a licensing condition was a criminal offence. The Premises Licence Holder confirmed that Part B of the Premises Licence was on display, however, it was a photocopy and this was not permitted. The Committee accepted this however and considered it was one small issue amongst many other very serious breaches. These included breaches on each visit such as no refusals nor incidents had been recorded in a book or register, and those books were not available; staff training records had not been completed and were not available. The Committee considered the breaches to be very serious especially in an area of problem drinkers and alcohol-related crime and anti-social behaviour. Also although being repaired during the visit in October 2017 the CCTV condition had been previously breached and the Committee would expect the fact that CCTV was not working would have been included in an incident book or at least reported to the Licensing Office. The Committee was seriously concerned that since the grant of the licence in March 2014 and over the life of the licence (approximately three years and eight

months) conditions and rules were continually being breached, despite warnings, advice, inspections, alcohol being seized and penalties issued.

19. The Applicant and Responsible Authorities explained that the Premises was within a cumulative impact area and the Police informed the Committee that there were many different alcohol fuelled crimes, serious disorder and serious incidents in the area. The Committee considered that the direct area where the Premises was situated suffered from alcohol fuelled crime and anti-social behaviour. It was noted, however, that the incidents could not be proven to be directly caused by the Premises.

20. The Committee considered that in accordance with the Guidance, its role in a review was to determine if there were problems at the premises which were undermining and detrimentally impacting the licensing objectives and to decide what action, if any, should be taken to promote those objectives. The Committee also noted that the fact of a cumulative impact policy should not be used as a ground for revoking an existing licence and the Committee did not use the special policy as a reason for revoking the Licence.

21. The Committee did consider that there were problems at the premises which were seriously undermining and detrimentally impacting on the promotion of the prevention of crime and disorder and public safety which was exacerbated because the Premises was in an area which was a hotspot for alcohol-related crimes and problems. Criminality had occurred at the Premises. Alcohol had been purchased, displayed for sale and sold from an untraceable, unregistered and, therefore, unapproved source. The alcohol for sale at the shop had no duty paid, a lot of the alcohol was high strength, high risk, cheap alcohol attractive to problem drinkers and there had been numerous breaches of conditions over the life of the licence. The objectives had been further seriously undermined because the Premises were being wholly irresponsibly managed in an area that already suffered from serious alcohol-related harms.

22. The Committee carefully considered whether any action less than revocation would uphold the objectives. The Premises Licence Holder informed the Committee that he would remove the manager and the Designated Premises Supervisor. However, the Committee considered the Premises Licence Holder did not understand that he had overall responsibility to uphold the licensing objectives. It considered throughout the life of the licence he had failed to take any steps to ensure the Premises were being run in accordance with the Licence and the law. The Committee considered that the Premises Licence Holder has not complied with the small amount of limitations currently on the licence, had failed to run the Premises responsibly or comply with the law. A change of Designated Premises Supervisor would not be appropriate. The Committee did not consider that further restrictions by way of conditions would be complied with, nor would a suspension uphold the objectives. The Committee found that the Premises had been trading irresponsibly over a long period, undermining the objectives and considered it appropriate to revoke the licence and the ability to sell alcohol in order to tackle the problems at the Premises.

The Chair informed the parties to the hearing of their right to appeal the decision within 21 days of receiving the notice and full details of the decision and reasons will be sent in writing to the parties within five working days.