

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 6 December 2017.

PRESENT: Councillors J A Walker (Chair), R Arundale and D J Branson

ALSO IN ATTENDANCE: J McCluskey - Trading Standards - The Applicant
J Smith - Legal Representative on behalf of the applicant and supporting Responsible Authorities
PC J Arbuckle - Cleveland Police
S Dixon; J Leyland - HMRC
F Helyer - Public Health
N Williams - Licensing

Respondents:-
M Hussain - Premises Licence Holder
J McCabe - Employee
M Foster - PLH's legal representative
C Mann - Tiberius Solutions

OFFICERS: J Dixon, J Nurtney and S Wearing

DECLARATIONS OF INTERESTS

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

17/11 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - HIFZA NEWS, 5 BEAUMONT ROAD, NORTH ORMESBY, MIDDLESBROUGH, TS3 6NL, REF NO. OL/17/11**

1. The Committee considered an application to review the Premises Licence in relation to Hifza News, 5 Beaumont Road, Middlesbrough, TS3 6NL ("the Premises") which authorises sales of alcohol (off sales) from 5.00am to 11.00pm on Mondays to Saturdays and 5.30 a.m. to 10.30 p.m. on Sundays.

Decision

2. The Committee carefully considered the application and appendices, the representations of the Responsible Authorities and representations of the Premises Licence Holder's representative, the Premises Licence Holder and two further witnesses called to give evidence. The Committee also considered 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 Applicant and the Responsible Authorities informed the Committee, in summary, of the following matters: 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. The alcohol seized was not purchased from a registered approved wholesaler. The alcohol was purchased from a "man in a white van". The production chain of the alcohol could not be traced and, therefore, there was a possibility and risk that it was unsafe (however, as the alcohol had not been formally tested this could not be proven on the balance of probabilities). The Committee was informed that the alcohol seized was high strength cheap alcohol. That the area where the premises is situated is subject to a Cumulative Impact Policy and there are problems of crime and anti-social behaviour in the area.

4. The Premises Licence Holder informed the Committee he had heard of the Alcohol Wholesaler Registration Scheme (AWRS) but did not fully understand its requirements. He assured the Committee that this was one mistake and that it would not happen again. The

Premises Licence Holder's representative informed the Committee that this issue had been taken extremely seriously by the Premises Licence Holder and that he had engaged external training consultants to introduce effective due diligence systems which would give the Committee the confidence they needed that this issue would not reoccur in future. Prior to this incident the Premises Licence Holder was not prevented from selling high strength beers and ciders in his premise. The premises licence had been transferred over on Grandfather Rights and, therefore, there were no conditions on the licence. The only conditions which applied were the mandatory licence conditions. The Premises Licence Holder's representative invited the Committee to take into account that the Premises Licence Holder had run the premise for many years without any history of problems. There was no evidence of any previous formal warnings issued by the responsible authorities.

5. It was not a matter in dispute that alcohol was displayed and sold at the premises which had no duty paid. The Committee noted that the Premises Licence Holder had not purchased the alcohol from a Registered and approved Wholesale Retailer which was a legal requirement. The alcohol was purchased from a man in a white van. There were no invoices. The Committee was informed by the Applicant that these were criminal offences. The Committee considered that the promotion of the prevention of crime and disorder objective was being undermined based on the evidence before them.

6. The Committee noted that the requirement to only purchase from a registered wholesaler (approved by HMRC) came into force in April 2017.

7. The Committee noted that the alcohol seized, and much of the stock, included high strength beers/lagers/ciders. The Responsible Authorities stated that such alcohol is considered high risk because it is attractive to problem drinkers who then either cause harm to themselves or others or cause disorder, crime or nuisance in the area.

8. The Committee noted that at the time of the review being commenced, the Premises Licence Holder was not prohibited from selling such products by any conditions on the licence.

9. However, the Committee considered that the fact the alcohol seized was high strength and high risk and that the unit price of the alcohol together with the strength made it cheap generally, aggravated the seriousness of the offences of selling alcohol from an unapproved source without duty being paid.

10. The Committee noted that the alcohol seized had not been formally tested and therefore they made no finding that the alcohol could be considered unsafe for consumers. The Committee did consider that it was irresponsible for a Premises Licence Holder to purchase alcohol when he was unaware of its source and had no evidence to show the chain of supply. The Committee accepted that the evidence indicated that the Premises Licence Holder had purchased the alcohol on only one occasion.

11. The Committee noted that the Premises Licence Holder now operated a Challenge 25 policy and that notices were now displayed at the premise.

12. The Applicant and Responsible Authorities explained that the Premises is within a cumulative impact area. There was no evidence that the premise had been linked to any specific incidents of crime and disorder in the area.

13. The Committee considered that, in accordance with the Guidance, its role in a review is to determine if there are problems at the premises which are undermining and detrimentally impacting the licensing objectives. The Committee noted that their decision had to be proportionate to the wrongdoing. They had to decide what action, if any, should be taken to promote those objectives. The Committee also noted that the fact of a cumulative impact area should not be used as a ground for revoking an existing licence and has not used the special policy as a reason for revoking the licence.

14. The Committee found that, based on the evidence, the premises had undermined the licensing objectives and in particular the prevention of crime and disorder. The Committee took a very dim view of the Premises Licence Holder's actions in purchasing alcohol from an

unknown source and that this was in breach of the Premises Licence Holder's legal responsibilities under the AWRS. The Committee gave very serious consideration to revoking the premises licence but took a step back from that action on this occasion. The Committee was mindful that the Premises Licence Holder had taken pro-active steps to ensure that this issue would not occur again in the future. The Premises Licence Holder, through his representative, indicated that he was in no doubt that if the Committee did not revoke his licence on this occasion then if he did appear before them again he could not expect another similar outcome.

15. The Committee carefully considered what action should be taken and deemed it appropriate to issue the Premises Licence Holder with a formal written warning from the Committee.

16. The Committee also deemed it appropriate to attach a number of conditions to the licence. The Committee noted that conditions 1 - 17 detailed below had been suggested by the Premises Licence Holder's representative. The Committee agreed that these conditions should be attached to the premises licence.

INCIDENT BOOK

1. An incident book must be kept at the Premises and maintained up to date (no later than 24 hours after the incident) at all times and will record the time, date and details of all incidents/complaints of crime and disorder or anti-social behaviour, including those reported to the venue. The incident book will also include details of any visit by a relevant authority or emergency service, and made available to Police, Licensing Officers and all other Responsible Authorities on lawful request or during an inspection.

REFUSALS REGISTER

2. A refusals register must be kept at the Premises and maintained up to date at all times recording the date time, type of product refused, reasons for every refusal to sell alcohol to a customer and the name and signature of member of staff refusing the sale. The refusals record must be made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

3. The Premises Licence Holder/Designated Premises Supervisor must monitor the refusals register on a monthly basis and must sign and date the register to confirm when this has been completed.

CHALLENGE 25

4. A Challenge 25 policy will be in place at the premises. Staff must require ID in the form of a current ten year passport, photo card driving licence, PASS Hologram identity card or a Photographic Military ID from any customer who appears to be under the age of 25 and verify the customer is over the age of 18 before any sale of alcohol is made.

5. A Notice will be displayed at all points of sale and at all entrances and exits informing customers and reminding staff that the premises is operating a Challenge 25 proof of age scheme.

TRAINING

6. Training in relation to Challenge 25, under age sales, sales to adults on behalf of minors (proxy sales), sales to intoxicated persons, refusals registers, incident records and all other conditions on the Premises Licence must be provided and undertaken by all members of staff (whether paid or unpaid) before he/she makes a sale, supply or delivery of alcohol and at least every six months thereafter.

7. Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of the training. The record must be signed by the member of staff who has received the training, the

Designated Premises Supervisor/Premises Licence Holder or external training providers.

8. Documented training records must be kept at the Premises and made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

9. The premises shall, where possible, take part in training offered by the Police or Local Authority on the subjects of vulnerability, child sexual exploitation and Licensing Act 2003 best practice.
CCTV.

10. A digital Closed Circuit Television System (CCTV) will be installed and maintained in good working order and be correctly time and date stamped.

11. The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed and be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.

12. Cameras will encompass all ingress and egress to the premises, the till area where sales take place and any other areas identified by Cleveland Police as requiring coverage and will record and retain CCTV footage for a minimum of 31 days.

13. The system will be password protected to prevent unauthorised access, tampering, or deletion of images and incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer.

14. There will be at all times, when the premises is open, a member of staff on duty with access to the CCTV system who is trained in the use of the equipment.

15. CCTV footage must be made available to be viewed by the Police, Licensing Officers or other Responsible Authorities on lawful request during a notified visit to the Premises; immediately if it is urgently required for investigation of a serious crime; or, within 24 hours if it is less urgent.

16. Any faults with the CCTV system will be recorded in the Incident Book.

AWRS

17. The premises will operate and maintain policies and procedures which provide a system of due diligence to prevent purchases from non-AWRS registered operators and to record suppliers which are approved by the DPS as approved suppliers to the business. Purchase of alcohol shall only be made from these approved suppliers. Such records will be updated every 12 months, in line with a risk assessment, and will be provided to HMRC, the Police, Licensing Officers or other Responsible Authorities on request.

18. The Committee also found it appropriate to attach three further conditions, namely:-

19. The premises will not stock, display or sell any lager, beer, cider or perry product with an ABV content above 6.5%.

20. The premises will not sell any single cans of lager, beer or cider.

21. The premises will not stock, display or sell any miniature bottles of spirits.

22. The Premises Licence Holder or Designated Premises Supervisor will participate in any 'Responsible Retailing' scheme and any relevant training and or campaigns which the Police or Local Authority provide or recommend.

23. The Premises Licence Holder or Designated Premises Supervisor will participate in any local Off Licence forums held by the Local Authority.

24. The Committee noted that the opening hours of the premise are currently less than the permitted hours on the licence. The Committee also felt it appropriate that the opening hours and hours for supply of alcohol should be amended so that they accurately reflect the trading hours of the premise, therefore, the Committee reduced the hours as follows:-

6.00am to 10.00pm on Mondays to Saturdays; and
7.00am to 10.00pm on Sundays.

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.