

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 12 January 2018.

PRESENT: Councillors J A Walker (Chair), D J Branson and L Lewis

OFFICERS: J Dixon

DECLARATIONS OF INTERESTS

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

17/13 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - CM NEWS, 460 LINTHORPE ROAD, MIDDLESBROUGH, TS5 6JG, REF NO. OL/18/02.**

1. The Committee considered an Application to Review a Premises Licence in the name of Mary Redjeevaraji Jeyaratnam in relation to Premises at 460 Linthorpe Road Middlesbrough TS5 6JG known as CM News, ("the Premises") which authorises the off sales of alcohol between 8.00am and 11.00pm Mondays to Saturdays and between 10.00am until 10.30pm on Sundays.

2. The Committee noted under Section 4 of the Licensing Act 2003 ("the Act" that it must carry out its functions with a view to promoting the licensing objectives. It noted under Section 52 of the Act the Committee, following hearing a review of a Premises licence, must, having regard to the application and any relevant representations, take such steps as it considers appropriate for the promotion of the licensing objectives.

3. The Committee noted that the steps are - to 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 carefully considered the Application, the report and appendices. It carefully considered the representations made by the Applicant, the Responsible Authorities, the Premises Licence Holder and her representative. It carefully considered the Act, Government Guidance under Section 182 of the Act ("the Guidance") and the Council's Statement of Licensing Policy ("the Policy") and the licensing objectives.

DECISION

5. The Committee decided it was appropriate to suspend the Licence for a period of three months and to modify the conditions on the Licence in order to promote the prevention of crime and disorder and in the interests of public safety.

CONSIDERATIONS AND REASONS

6. The Applicant and the Responsible Authorities informed the committee of the various issues including, in summary, the following matters:

7. That criminality and irresponsible management had occurred at the Premises. During and inspection with the Responsible Authorities and HMRC on the 15 June 2017, HMRC seized alcohol for which no duty had been paid. The alcohol seized had not been purchased from a registered approved wholesaler. There was no invoice for the alcohol nor was there any formal receipt for the alcohol apart from a list of the alcohol provided by the Premises Licence Holder. The production chain of the alcohol could not be traced, and, therefore, there was a possibility that the alcohol could be unsafe. There was no trail of the transfer of the alcohol from her cousin's store where the Premises Licence Holder claimed she purchased it from, nor was there a trail of the purchase to her cousin's shop. The Committee was informed that the alcohol seized was high strength cheap alcohol and 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 crime disorder or anti-social behaviour. That the Licence was very basic and easy to follow however conditions were breached. That the Premises Licence Holder had

unlawfully sold alcohol over a period of approximately five months whilst the premises licence had been suspended for non-payment of the annual fee. That the area where the premises is situated is subject to a cumulative impact policy and there are alcohol related problems in that area.

8. The Premises Licence Holder and her representative informed the Committee of various matters in response to the Application including, in summary, the following matters:

9. That the alcohol stock seized was from the Premises Licence Holder's cousin's shop which had closed. That the Premises Licence Holder's cousin held a premises licence to sell alcohol from the store. It is lawful for a Premises Licence Holder to purchase alcohol from another shop where there is a Premises Licence and then sell it on. The Premises Licence Holder did have a receipt although it did not have the name or the place the alcohol was purchased. That Premises Licence had purchased alcohol from registered wholesales but displaying alcohol where no duty is paid was a one off mistake. The Premises Licence Holder was not aware of any Notice advising her of the requirement to purchase alcohol from wholesalers who have been registered with HMRC. That the Premises Licence Holder was not aware that her licence had been suspended and that is why she continued to sell alcohol. That as soon as the Premises Licence Holder was aware the licence fee was paid. That part B of the Licence was displayed but had fallen off the wall during the visit. That no civil penalty was imposed by HMRC for wrongdoing. That none of the incidents in the area were caused by the Premises. That the Premises Licence Holder offered conditions on the Licence.

10. The Committee considered that the alcohol seized was on display at the Premises and no duty had been paid which HMRC had advised is a criminal offence.

11. The Committee considered that when purchasing alcohol from a wholesaler that wholesaler must be registered and that HMRC confirmed purchasing alcohol from an unregistered wholesaler is a criminal offence. The Committee considered that as the alcohol had no duty it could not have been purchased from a reputable source and a Premises Licence Holder is responsible for ensuring the alcohol sold at their premises is lawful.

12. The Committee noted that the Premises Licence Holder informed HMRC that she purchased the alcohol from her cousin who had closed his shop and was selling off his stock. That it is lawful for a Premises Licence Holder to purchase alcohol from another shop with a Premises Licence. The Committee considered that HMRC advised that a one off purchase can be classed as an incidental sale and would not breach the requirement to purchase alcohol from a registered wholesaler. However in this case the alcohol purchased was unlawful as duty had not been paid. Also, the Committee considered the document the Premises Licence Holder produced listing alcohol was not a formal receipt. It had no name, no registration, no address. It was simply a list of alcohol with some pricing and hand written amendments. The Cousin also could not be contacted by the Premises Licence Holder. It was noted that HMRC did not investigate the cousin further, however, it is the Premises Licence Holder's responsibility to ensure the objectives are upheld at her Premises.

13. Although there was no evidence that the alcohol was unsafe because no tests were carried out, the Committee were concerned that there was no traceability of production nor transfer to the Premises. Therefore there was a potential risk to public safety as the Premises Licence Holder could not be satisfied that the alcohol sold to the public was properly produced or safe.

14. The Committee was seriously concerned that the Premises Licence Holder had been selling alcohol unlawfully without any authorisation to do so for a long period over five months. This is a serious criminal offence which carries with it an unlimited fine. It was noted that the Premises Licence Holder was not prosecuted, but she did receive a warning. Although the Premises Licence Holder claimed she had no knowledge of the suspension and paid it as soon as she became aware, the Committee noted that two reminders were sent to pay the annual fee and the actual suspension notice was personally served on the Premises. The address given by the Premises Licence Holder is the premises address and she told the Committee she visits the premises every day. The Committee was satisfied that warnings and notices were properly served and either the Premises Licence Holder was not being truthful or

alternatively was wholly irresponsible. This is supported by the Premises Licence Holder's failure to pay the annual fee again in December 2017 which resulted in two reminder letters and a notice warning suspension before the fee was paid.

15. The Premises Licence Holder claimed she had changed address, however, the Committee was concerned that the address remained the Premises address on the Premises Licence and the Premises Licence Holder had failed to inform the Licensing Authority of her change in circumstances. In addition, there had been breach of the requirement to display part B of the Licence (although the PLH claimed it had fallen off the wall) and there was no proof of age notice which is normal practice for responsible retailers when officers visited in October 2017.

16. The Committee was satisfied that the Premises Licence holder who is also the Designated Premises Supervisor was failing to uphold the prevention of crime and disorder because she was responsible for criminal activity at the premises by displaying for sale of alcohol where no duty had been paid, selling alcohol whilst her licence was suspended and failing to comply with requirements under the Act.

17. The Committee noted that the alcohol seized and much of the stock included high strength beers, lagers and ciders and was cheap alcohol based on the unit price and strength. The Responsible Authorities stated that such alcohol is high risk because it is attractive to problem drinkers who then either go onto cause harm to themselves or others (which the Committee considers is a public safety issue) or cause crime and disorder or anti-social acts. It noted this was a general statement and there are no prohibitions on the licence, however, the Committee considered the fact that the alcohol seized was high strength, cheap in relation to the unit price and high risk aggravated the seriousness of the issue of selling untraceable alcohol without duty being paid.

18. The Premises is situated in an area which is subject to a Cumulative Impact Policy in relation to Off Sales of alcohol. It was confirmed that there are a very high number of alcohol fuelled incidents of crime and disorder and anti-social behaviour within a radius of 500 metres of the Premise although it was noted none of the incidents were linked to the Premises. The Committee noted that a Cumulative Impact Policy cannot be a ground to bring a review of the Premises, however, the Committee did consider that the Premises are being operated irresponsibly in an area that already suffers from serious alcohol related harms.

19. In addition, the Committee was concerned that over a relatively short period since the Premises Licence Holder took over the Licence and control of the Premises on the 23 March 2015 the above incidents have occurred.

20. The Committee gave very serious consideration to revoking the Premises Licence because it is clear the cause of the concerns is the irresponsible management by the Premises Licence Holder who is the DPS and criminal activity that has occurred at the Premises.

21. However, on this occasion the Committee decided to take a step back from revoking the Licence in view of the assurances from the Premises Licence Holder and that HMRC decided not to penalise the Premises Licence Holder for wrongdoing. It considered that a suspension of the Licence for the full period of three months and the imposition of a number restrictions and safeguards by way of conditions should prevent the illegality and irresponsible trading going forward.

22 The suspension is appropriate because the Premises Licence Holder has shown that she had been trading irresponsibly and has caused criminality to occur at the Premises. The Committee was seriously concerned that the Premises Licence Holder failed to take responsibility or understand her responsibilities. The issues were not limited to one incident and there are numerous concerns as set out above.

23. The Committee considered that the suspension should enable the Premises Licence holder to bring into force the restrictions and safeguards by way of conditions and also to deter the Premises Licence Holder from allowing the problems or incidents to happen again.

24. The Committee decided to include the conditions proposed by the Premises Licence Holders but has changed the wording of those conditions to ensure enforceability. However the Committee does not consider those alone are sufficient and the additional conditions explained below are required ensure problems do not occur at the Premises.
25. The conditions are set out in full in the appendix to this decision and in summary the conditions that are appropriate to be attached to the Licence are as follows:
26. Alcohol stock. The Committee considered that to ensure responsible trading and to avoid high risk products or drinks attractive to problem drinkers, in the interests of public safety and the prevention of crime and disorder, the licence will be conditioned to ensure that there will be no sales of single cans of lager beer or cider irrespective of abv content. In addition there will be a ban on all beer, cider or perry products with an abv content above 6.5 %. These are drinks the responsible authorities' state are high risk and cause serious harms, they were also the types of alcohol seized by HMRC from the premises. The Council requires that the display area of alcohol must be limited in comparison to other products and goods to ensure the Premises remains a convenience store and not wholly an off licence which will attract a different clientele.
27. Proof of Age. The Committee requires a Challenge 25 policy to be put in place to ensure there are no failings at the premises and is the minimum expected in the area where the Premises is situated.
28. Incident Book. This is required to record all problems at the premises or directly outside of the premises to assist Responsible Authorities to ensure the objectives are being met.
29. CCTV. A condition requiring CCTV to be in place is required to prevent crime and disorder, is the minimum expected for such premises.
30. Responsible Retailing - As the Premises Licence Holder has shown to have irresponsible practices this condition is appropriate to assist the Premises Licence Holder in ensuring proper practices are put in place.
31. The other conditions (reworded) (relating to staff training, refusals book, personal licence holder being on the premises at all times and the purchase of alcohol) are set out in the appendix to the decision.
32. The embedded restrictions on the current licence are to be removed.
33. The hours of the licence are to remain the same.
34. The Applicant, a Responsible Authority who made a relevant representation or the Premises Licence Holder may make an appeal against this decision to the Magistrates Court within a period of 21 days beginning with day on which that party was notified of this decision.

 
CONDITIONS

CCTV

1. A digital Closed Circuit Television System (CCTV) will be installed and maintained in good working order and be correctly time and date stamped.
 - 1.1 The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed.
 - 1.2 CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
 - 1.3 Cameras will encompass all ingress and egress to the premises, the immediate area outside the frontage of the Premises and all areas where the sale/supply of alcohol occurs.

- 1.4 The system will record and retain CCTV footage for a minimum of 31 days .
- 1.5 The system will record at all times when the Premises are open.
- 1.6 The system will incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer.
- 1.7 The Digital recorder will be password protected to prevent unauthorised access, tampering, or deletion of images.
- 1.8 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.
- 1.9 Upon receipt of a request for a copy of CCTV footage from Police, Licensing Officers or any other Responsible Authority, the member of staff will produce the footage within 24 hours or less if urgently required for investigations of serious crime.
- 1.10 CCTV footage must be made available to be viewed by the Police, Licensing Officers or other Responsible Authorities on request during an inspection of or visit to the Premises.

INICIDENT BOOK

2. 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 following:
 - 1.2 Time date and details of all incidents/complaints of crime and disorder or anti-social behaviour.
 - 1.3 All crimes reported to the venue.
 - 1.4 Any faults in the CCTV system, searching equipment or scanning equipment.
 - 1.5 Any visit by a responsible authority or emergency service.
3. The incident book must be made available to Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

REFUSALS REGISTER

4. 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.
5. The refusals record must be made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.
6. The Premises Licence Holder or the Designated Premises Supervisor must monitor the Refusals Register every month and must sign and date the Refusals Register when this has been completed, or if the Refusals Register is electronic the check and date and time of the check must be clearly recorded.

TRAINING

7. Training in relation to Challenge 25, under age sales, sales to adults on behalf of minor (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 or supply of alcohol and at least every six months thereafter.
8. 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, the Premises Licence Holder or external training providers.

9. 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.

CHALLENGE 25

10. Staff must require ID in the form of a current ten year passport, photo card driving licence or PASS Hologram identity card 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.

11. Notices must be exhibited at all points of sale and at all entrances and exits informing customers and staff that the Premises is operating a Challenge 25 Policy.

RESPONSIBLE RETAILING

12. 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.

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

ALCOHOL STOCK

14. The Premises will not stock display or sell any lager, beer, cider or Perry product with an ABV (alcohol by volume) content above 6.5%

15. The Premises will not sell or supply and single cans of lager, beer or cider

16. Alcohol must only be displayed in area identified on a plan agreed with the Licensing Authority or in an alternative area of the Premises but that alternative display area must not exceed the size of the floor / display area identified on the plan agreed with the Licensing Authority.

OTHERS

17. A personal licence holder must be present in the Premises at all times when alcohol is offered for sale.

18. Invoices and receipts must be provided for alcohol purchased by the Premises Licence Holder or the Designated Premises Supervisor or any person authorised to purchase alcohol on their behalf for sale at the Premises. All Invoices and receipts of alcohol purchased for sale at the Premises must be retained at the Premises for a period of at least twelve months from the date of the Invoices. All invoices and receipts of alcohol purchased for sale at the Premises should be made available to the police, licensing officers or other responsible authorities on request or during an inspection.

19. The Premises Licence Holder shall maintain a list of suppliers it approves alcohol to be purchased from. That list must include the name, address, AWRS number or reason why there is no such number and contact details. That documents should be made available to the police licensing officers or other responsible authorities on request or during an inspection.