

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 16 January 2018.

PRESENT: Councillors J A Walker (Chair) and D J Branson and J Goodchild.

ALSO IN ATTENDANCE: J McCluskey - Trading Standards (The Applicant)
PC E Price, Cleveland Police
S Dixon, G McCartney, HMRC
F Helyer, Public Health
N Williams, Licensing
J Smith - Barrister on behalf of the applicant

Mr V Ananthasivam - Premises Licence Holder
J Payne - Premises Licence Holder's Legal Representative.

OFFICERS: C Cunningham, J Dixon and S Wearing.

DECLARATIONS OF INTERESTS

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

17/14 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - QUICK STOP CONVENIENCE, 53 ACKLAM ROAD, MIDDLESBROUGH, TS5 5HA, REF NO. OL/18/03**

DECISION

1. The Committee considered an application to review a Premises Licence in the name of Veluppilai Ananthasivam in relation to the premises at 55 Acklam Road, Middlesbrough, TS5 5HA, known as Quick Stop Convenience Stores, ("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. The Committee must also have regard to guidance issued by the Government under Section 182 of the Act ("the Guidance") and Middlesbrough Council's Statement of Licensing Policy ("the Policy"). 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 considered appropriate for the promotion of the licensing objectives.
3. The Committee noted that the steps were: 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; revoke the licence.
4. The Committee carefully considered the application, the report and appendices. It carefully considered the representations made by the applicant, Responsible Authorities, Premises Licence Holder ("the PLH") and his representative. It carefully considered the Act, Guidance, Policy and licensing objectives.

DECISION

5. The Committee decided it was appropriate to remove the Designated Premises Supervisor; to suspend the premises licence for a period of six weeks; 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 an inspection with the Responsible Authorities and HMRC on 16 June 2017, HMRC seized alcohol for which no duty had been paid. The alcohol seized amounted to 537 litres and the duty amounted to £933.00. This was a significant amount of unlawful alcohol. It was a criminal offence to sell alcohol without duty paid and to purchase alcohol from a wholesaler who was not registered with HMRC. The production chain of the alcohol could not be traced, and, therefore, there was a possibility that the alcohol could be unsafe. The Committee was informed that the alcohol seized was high-strength, cheap alcohol and 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 crime disorder or anti-social behaviour. That the PLH was not at the Premises. The Designated Premises Supervisor ("the DPS") was present at the Premises. The DPS had control of the premises and was responsible for purchasing the alcohol. That the Applicant and HMRC considered the DPS to be evasive and not truthful. The DPS was issued with a penalty for wrongdoing. That the area where the premises was situated was a deprived area which suffered from a high level of alcohol fuelled crime disorder and anti-social behaviour and alcohol related harms.

8. The PLH and his representative informed the Committee of various matters in response to the application including, in summary, the following matters:-

9. The PLH gave the DPS authority to purchase all alcohol but not from an unapproved source. The DPS had made a mistake when he purchased the alcohol from the unapproved seller but it was a one-off mistake. The PLH was not aware of the purchase. That the PLH had invoices for other purchases of alcohol from registered wholesalers. The PLH was not aware of any Notice advising him of the requirement to purchase alcohol from wholesalers who have been registered with HMRC. That none of the incidents in the area were caused by the Premises. That there were no other problems at the Premises and the Premises was compliant on additional visits. That the PLH offered conditions on the Licence.

10. The DPS was not present at the hearing.

11. The Committee was satisfied that the alcohol seized was on display at the Premises and no duty had been paid. It was satisfied the alcohol was not purchased from a registered wholesaler and was purchased from an unknown person (a man in a white van). Therefore, the Committee considered the promotion of the prevention of crime and disorder at the premises was being undermined because HMRC informed the Committee both were criminal offences.

12. The Committee was satisfied the operation of the premises was a potential risk to public safety because the production trail of the alcohol could not be traced.

13. The Committee considered that a number of factors added to the seriousness of the concerns at the premises.

14. Although not all of the alcohol on display was unlawful, a vast amount of alcohol - amounting to around 537 litres with duty owing of £993 - had been purchased from an unknown source. The PLH claimed this was a one-off purchase and a one-off mistake. However, a large amount of unlawful alcohol had been on the Premises over a period of time and a large amount was also stored next door which the Committee believed was intended to be displayed for sale. The production code was March 2017 and the visit did not take place until June 2017. The Committee did not believe this amount was on display for sale only on the day of the inspection and believed it would have been on display over a period of time. This alcohol was not traceable, therefore, the DPS had no way of knowing whether that alcohol had been produced safely or not tampered with in transition. There was, therefore, a public safety risk and the premises was trading wholly irresponsibly.

15. The Committee noted that the PLH's representative informed the Committee that a PLH is not responsible for carrying out licensable activities at the premises where another person was on the premises and carried out those activities. The Committee considered that the case

law referred to did not involve a review of a licence as was the case here and was in respect of criminal liability for carrying out a licensable activity otherwise than in accordance with an authorisation under Section 136 of the Act. It was clear that a PLH had overall control of the operation of a premises and responsibility to ensure the activities at the premises did not undermine the licensing objectives. The Committee was not precluded from taking action in relation to a premises licence under review.

16. The Committee was seriously concerned that the DPS was engaged by the PLH in December 2016 and within a short period of being in charge of the premises purchased unlawful alcohol from an unlawful source and had stored and displayed this alcohol for sale over a period of time. Although the PLH had said that he was unaware of the unlawful alcohol the Committee considered he failed to carry out any checks to ensure the premises was operating responsibly. The Committee noted that the PLH visited the shop regularly so would have seen the alcohol on display and the alcohol stored. That the unlawful alcohol was of a specific type being high strength cheap Polish alcohol. The PLH also gave the same address as the DPS which was the premises next door to the shop where a quantity of the alcohol was stored in the hallway of that premises. It was difficult for the Committee to believe that the PLH was oblivious, however, in any event it showed that PLH had undermined the objectives by not ensuring his premises was run lawfully and responsibly.

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 was high risk because it was attractive to problem drinkers who then either go on to cause harm to themselves or others (which the Committee considered was a public safety issue) or cause crime and disorder or anti-social acts. It noted this was a general statement and there were no prohibitions on the licence, however, the Committee considered the fact that the alcohol seized was high strength, cheap and high risk aggravated the seriousness of the issue of selling untraceable alcohol without duty being paid.

18. The premises was situated in an area which suffered from a high number of alcohol fuelled incidents of crime and disorder and anti-social behaviour and other alcohol harms, although it was noted none of the incidents were linked to the premises. However, the Committee was concerned that the premises was being operated irresponsibly in an area that already suffered from serious alcohol related harms.

19. The Committee was seriously concerned that, in addition to purchasing unlawful alcohol for sale from an unknown source shortly after being engaged as the DPS, the DPS was evasive to officers and indeed lied at certain points. The Committee did not believe that the DPS was under pressure, or that his honesty was shown by him voluntarily showing the stock next door. He clearly gave wrong information to officials about when he purchased the stock (claiming it was six months prior when the production date was later in March 2017), the amount purchased and the amount paid. The true amounts only came to light throughout the day when the DPS was further questioned about the stock (basically when he was put on the spot). The Committee noted that because of his actions the DPS was issued with a penalty for wrongdoing.

20. The Committee gave very serious consideration to revoking the Premises Licence because it was clear the cause of the concerns was the irresponsible management by the PLH by failing to make checks and ensuring the objectives were being upheld. The Committee considered that criminality had occurred at the premises which undermined this objective and the operation was irresponsible and a risk to public safety in view of the untraceable alcohol.

21. However, on this occasion the Committee decided to take a step back from revoking the licence in view of the assurances from the PLH. It considered that although the PLH was at fault it was the DPS who purchased the alcohol, sold the alcohol, mislead officials and was issued with a penalty for wrongdoing. Although the premises had since been compliant, the Committee considered that the removal of the DPS who had only been in place for a short period of time was appropriate because of the seriousness of his wrongdoing.

22. It considered that a suspension of the licence for a period of six weeks and the imposition

of a number of restrictions and safeguards by way of conditions should prevent the illegality and irresponsible trading going forward. The suspension was appropriate because the PLH had allowed irresponsible trading and criminality to occur at the premises as a result of his poor practices. The Committee was seriously concerned that the PLH failed to take responsibility. The Committee considered that the suspension should enable the PLH to bring into force the new restrictions and safeguards by way of conditions, engage a suitable and responsible DPS and would deter the PLH from allowing problems or incidents to happen again.

23. The Committee decided to include the conditions proposed by the PLH but had changed the wording of those conditions to ensure enforceability. However, the Committee did not consider those alone to be sufficient and the additional conditions explained below were required to ensure problems did not occur at the Premises.

24. The conditions were set out in full in the appendix to this decision and in summary the conditions that were appropriate to be attached to the licence, as follows:-

25. 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 would be conditioned to ensure that there were no sales of single cans of lager, beer or cider, irrespective of ABV content. In addition there would be a ban on all beer, cider or Perry products with an ABV content above 6.5 %. The Council required that the display area of alcohol must be limited in comparison to other products and goods to ensure the premises remained a convenience store and not wholly an off-licence which would attract a different clientele.

26. Proof of Age. The Committee required a 'Challenge 25' policy to be put in place to ensure there were no failings at the premises and was the minimum expected in the area where the premises was situated.

27. Incident Book. This was required to record all problems at the premises or directly outside of the premises to assist Responsible Authorities to ensure the objectives were being met.

28. CCTV. A condition requiring CCTV to be in place was required to prevent crime and disorder, and was the minimum expected for such premises.

29. Responsible Retailing - As the PLH had shown to have irresponsible practices this condition was appropriate to assist the PLH in ensuring proper practices were put in place.

30. 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) were set out in the appendix to the decision.

31. The embedded restrictions on the current licence were to be removed.

32. The hours of the licence were to remain the same.

33. The applicant, a Responsible Authority who made a relevant representation or the PLH 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.

APPENDIX

CONDITIONS

1. CCTV.

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

1.2 The system will incorporate sufficient built-in hard-drive capacity to suit the number of

cameras installed.

1.3 CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.

1.4 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.

1.5 The system will record and retain CCTV footage for a minimum of 31 days.

1.6 The system will record at all times when the Premises are open.

1.7 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.

1.8 The digital recorder will be password protected to prevent unauthorised access, tampering, or deletion of images.

1.9 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.

1.10 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.

1.11 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.

2. INCIDENT BOOK

2.1 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 following:-

2.2 Time date and details of all incidents/complaints of crime and disorder or anti-social behaviour.

2.3 All crimes reported to the venue.

2.4 Any faults in the CCTV system, searching equipment or scanning equipment.

2.5 Any visit by a responsible authority or emergency service.

2.6 The incident book must be made available to Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

3. REFUSALS REGISTER

3.1 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.

3.2 The refusals record must be made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

3.3 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.

4. TRAINING

4.1 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 or supply of alcohol and at least every six months thereafter.

4.2 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.

4.3 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.

5. CHALLENGE 25

5.1 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.

5.2 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.

6. RESPONSIBLE RETAILING

6.1 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.

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

7. ALCOHOL STOCK

7.1 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%.

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

7.3 Alcohol must only be displayed in the 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

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

9. 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 invoice or receipt. All invoices and receipts of alcohol purchased for sale at the Premises to be made available to the police, licensing officers or other responsible authorities on request or during an inspection.

10. 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 document to be made available to the

police licensing officers or other responsible authorities on request or during an inspection.