

**LICENSING SUB-COMMITTEE A**

A meeting of the Licensing Sub-Committee A was held on 27 February 2018.

**PRESENT:** Councillors J A Walker (Chair), R Arundale and J Goodchild

**ALSO IN ATTENDANCE:** On behalf of the Applicant:-  
J Leyland; M Dent - HMRC  
J McCluskey - Trading Standards  
F Helyer - Public Health  
N Williams - Licensing  
Sergeant P Higgins; PC E Price - Cleveland Police  
J Smith - Legal Representative on behalf of the applicant (Responsible Authorities)

On Behalf of the Premises Licence Holder:-  
K Pratt - Premises Licence Holder  
M Finnegan - Premises Landlord  
C Nivens - Designated Premises Supervisor  
B Hodgson - D & B Licensing Consultants  
S Catterall - Legal Representative on behalf of the Premises Licence Holder

**OFFICERS:** C Cunningham, J Dixon and T Hodgkinson.

**DECLARATIONS OF INTERESTS**

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

17/16 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE: MK CONVENIENCE, 31-33 SALTERSGILL AVENUE, MIDDLESBROUGH, TS4 3LD, REF: OL/18/05**

A report of the Director of Culture and Communities had been circulated outlining an application, received from Middlesbrough Council's Trading Standards, for a review of the Premises Licence in relation to MK Convenience, 31-33 Saltersgill Avenue, Middlesbrough, TS4 3LD, Ref No. OL/18/05.

Summary of Current Licensable Activities and Hours

Sale of alcohol (off sales) – 9.00am to 10.00pm Monday to Sunday.

A copy of the existing Premises Licence was attached at Appendix 1.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

It was confirmed that a copy of the review application, in accordance with the requirements of Section 51 of the Licensing Act 2003, was served on the Premises Licence Holder, Mr K Pratt, and all the Responsible Authorities. All parties confirmed that copies of the report and accompanying documents had also been received in accordance with the Licensing Act (Hearings) Regulations 2005.

Details of the Application

The Licensing Manager presented the report outlining the application for review in respect of MK Convenience, 31-33 Saltersgill Avenue, Middlesbrough, Ref OL/18/05, made by Middlesbrough Council's Trading Standards, supported by HMRC, Public Health, Licensing and Cleveland Police.

Members were advised that the matter was due to be considered at a hearing on 30 November 2017, however, due to unforeseen circumstances the matter was adjourned until 8 January 2018. Prior to the hearing scheduled for 8 January 2018, the Premises Licence Holder's legal representative requested that the matter be further adjourned due to illness

suffered by one of the witnesses. The matter was subsequently re-scheduled for today's Hearing.

The application for review was submitted by Middlesbrough Council's Trading Standards Service following a multi-agency operation, carried out over four days during June and July 2017, involving Officers from Trading Standards, HMRC, Immigration Enforcement and Cleveland Police. The operation visited 36 off-licensed premises within the Middlesbrough and Redcar areas.

On 16 June 2017, the subject premises were visited and HMRC officers revealed that UK Excise Duty, in the sum of £458, had not been paid in respect of a range of alcoholic products offered for sale. This resulted in the seizure of 99.5 litres of alcohol. A copy of the review application submitted by Mr J McCluskey, Principal Trading Standards Officer, was attached at Appendix 2.

During the 28 day consultation period in respect of the application to review, several responses were received as follows:-

- Director of Public Health (18 October 2017) - Appendix 3.
- Cleveland Police (1 November 2017 plus further supporting documents submitted 22 November 2017) - Appendix 4.
- Licensing Authority (2 November 2017) - Appendix 5.

In addition, on 30 November 2017, a submission was received from the Premises Licence Holder's legal representative enclosing references from the Police regarding the CCTV and management of the CCTV at the premises. Further documents were submitted on 8 February 2018, including an invoice dated 18 April 2017 in respect of the Store's purchase of certain alcoholic products. Copies of these documents were attached at Appendix 6.

By way of background, the Committee was advised that the premises had operated with the benefit of a Premises Licence since 19 March 2008. Mr K Pratt held the licence since 20 September 2012 and was also the Designated Premises Supervisor.

On 29 November 2017, the Premises Licence Holder (Mr Pratt) made an application to vary the licence to change the DPS to Ms C Nivens. Following a 14-day consultation period, the Police raised no objection and the licence was subsequently varied to include Ms Nivens as the DPS.

On 6 December 2017, Mr M Finnegan submitted an application to transfer the Premises Licence from Mr Pratt to himself. During the consultation period, the Police objected to Mr Finnegan becoming the Premises Licence Holder in view of his involvement in the purchase of the alcohol seized by HMRC during the visit on 16 June 2017.

Following the adjournment of the review Hearing, due to the illness of Mr Finnegan, a further application to transfer the Premises Licence to Ms Nivens was made on 9 January 2018. The Police objected on the grounds that granting the transfer of the licence would undermine the prevention of crime and disorder and public safety licensing objectives.

In view of the Police objection to the application to transfer the licence to Ms Nivens, provisional arrangements had been made for this to be considered by the Licensing Sub Committee, although a decision would be taken as to whether it would be necessary to hold a hearing depending upon the outcome of the review application.

A further document had been produced this morning by the applicant's legal representative, rebutting the submitted invoices dated 18 April 2017.

#### Applicant in Attendance

The applicant's legal representative presented the case in support of the application to review the premises licence in respect of MK Convenience, 31-33 Saltersgill Avenue, Middlesbrough. The application for review was submitted by Trading Standards and supported by HMRC, Public Health, Cleveland Police and the Licensing Authority, following a multi-agency operation visit to the premises on 16 June 2017.

The applicant's legal representative submitted that the premises was poorly managed and that there was a disregard for the law and due diligence processes. There had been a lack of responsibility for the safety of customers when purchasing alcohol.

On the day of the multi-agency operation visit to the store, Mr Finnegan had been present and identified himself as the Manager. Mr Finnegan accepted that he had purchased alcohol from 'a white van'. An invoice had now been produced, dated 18 April 2017, which was being questioned as it had no AMRS Registration number and a responsible retail premises would know that this was a requirement.

HMRC made further enquiries and the wholesaler named on the invoice, where alcohol had been purchased from, should not have been selling any alcohol after March 2017 as they were not registered to do so. It was highlighted that the wholesaler was in Birmingham which must be queried as there were a number of responsible local wholesalers that the premises could have purchased from. In addition, the price of some of the alcohol being sold from the premises did not add up in terms of the cost of excise duty and profit margins. It seemed 'too good to be true'.

The applicant's legal representative confirmed that the following witnesses would be called upon and suggested that questions from all parties be directed to each witness in turn:-

- Mr J McCluskey, Trading Standards (Appendix 2)
- Mr M Dent/J Leyland, HMRC (Appendix 2)
- Ms F Helyer, Public Health (Appendix 3)
- Mr N Williams, Licensing Authority (Appendix 5)
- PC E Price/Sergeant P Higgins, Cleveland Police (Appendices 4, 4a and 4b).

#### Trading Standards

The applicant's legal representative called upon J McCluskey, Principal Trading Standards Officer, who confirmed that the content of his application for review was correct.

The Officer stated that the application for review was made based on the prevention of crime and disorder and public safety following a multi-agency operation on 16 June 2017, where Trading Standards Officers had taken part in an exercise with HMRC, Immigration and Enforcement and Cleveland Police licensing unit to visit the subject premises.

During the visit, HMRC Officers discovered non-duty paid alcohol products on sale at the premises and that there was no traceability for such products. Mr Pratt was the DPS and Premises Licence Holder at the time of the visit.

The Officer confirmed that Mr Pratt admitted that he and another store manager had purchased some beers and wines from a 'white van' without an invoice. There was a great deal of legislation controlling the purchasing of goods and ensuring their traceability. On the day of the visit, HMRC requested invoices for the alcohol during the inspection, however, no proof of purchase could be provided. Initial concerns had been raised in relation to the alcohol due to the low prices which was not consistent with high-ABV products.

#### Questions to Trading Standards

All parties were afforded the opportunity to ask question of the Principal Trading Standards Officer. The Premises Licence Holder's legal representative raised the following issues:-

- In response to a question, the Principal Trading Standards Officer advised that the Alcohol Wholesaler Retail Scheme (AWRS) became effective on 1 April 2017 and required all retailers purchasing alcohol to ensure that the wholesaler from whom they were purchasing was approved by HMRC under the AWRS.
- The legal representative queried what steps Trading Standards Officers had taken to raise awareness of the Scheme amongst retailers. The Principal Trading Standards Officer responded that Officers visited licensed premises to publicise the scheme. When asked whether this had been the case with these particular premises, the

Officer responded no.

HMRC

The applicant's legal representative called upon HMRC Officers J Leyland and M Dent. Both officers were present and confirmed the content of their respective statements dated 28 September 2017 and 25 July 2017.

The applicant's legal representative asked M Dent to summarise the events of the visit on 16 June 2017. Mr Dent stated that he visited the premises as part of the multi-agency operation at 11.25am on 16 June 2017. Mr Finnegan identified himself as the manager and confirmed that Mr Pratt was the Premises Licence Holder, however, Mr Pratt was not present. Mr Dent found a quantity of Polish beer and Italian wine at the premises and had requested the invoices. Proof of purchase could not be produced. Mr Dent confirmed that he had spoken to Mr Pratt on the telephone and was informed that he intended to sell the business as he was not involved in the day to day running of the business. Mr Pratt also confirmed that Mr Finnegan was in charge of the premises and that Mr Ward was the previous manager of the shop.

The applicant's legal representative asked where Mr Pratt had stated he had bought the alcohol in question. Mr Dent responded that Mr Pratt had stated he was in no doubt that someone had bought the alcohol from a white van. Mr Finnegan had stated, during the visit, that all the alcohol was purchased from an established Cash and Carry but was vague about the details.

The applicant's legal representative asked why Polish beer on sale at the premises has raised alarm bells. Mr Dent explained that, from experience, Polish beer had presented problems and when enquiries were made it transpired that no duty had been paid on the products, amounting to £458. No invoices were produced for the seized alcohol and no invoices were produced following the visit until the review application process was instigated.

In response to a question, Mr Dent advised that around 5% of alcohol was removed from the shelves when the alcohol was seized.

The legal representative asked whether Mr Dent had concerns upon seeing the invoice, dated 18 April 2017, which had now been produced. Mr Dent advised that he had carried out checks to establish the supply chain of the alcohol, in accordance with usual procedure, to establish the duty point and whether it had been paid. BD Wholesale Ltd had applied for the AWRS within timescales, however, the application was refused and the Company was told to cease trading from January/February 2018 and subsequently closed until the appeal was heard. The decision to refuse was upheld in March 2017. The Company should not have been supplying wholesale alcohol following that date and the date of the invoice produced by MK Convenience was 18 April 2017.

Mr Dent was asked to explain what the AWRS was. It was explained that the purpose of the AWRS was to register the wholesale supply of alcohol from one business to another and that those approved have robust due diligence to account for excise on all goods that they supplied. Due diligence was of primary importance to the scheme and only fit and proper businesses were accepted.

The legal representative queried how easy it would be to find out about the AWRS scheme. Mr Dent stated that mailshots publicising the scheme were sent out to the businesses by HMRC. In addition HMRC had a 'look-up' system on the Gov.uk website in order to find out whether a wholesaler was registered. Experienced businesses would be expected to carry out such checks.

Questions

All parties were afforded the opportunity to ask questions of Mr Dent. The Premises Licence Holder's legal representative raised the following issues:-

- The legal representative referred to the AWRS scheme being introduced on 1 April 2017 and Mr Dent's statement that mailshots were sent out to businesses and queried whether this was a fact. Mr Dent confirmed that information on the scheme was sent to businesses throughout 2016 as businesses needed help to apply for scheme and retailers were also contacted through trade associations.
- The legal representative asked how long Mr Dent had known that the premises licence for the premises would be reviewed. Mr Dent replied that he had been aware since the joint operation was carried out in June 2017.
- The legal representative asked whether there was any evidence to provide that the information on the AWRS was sent to these particular premises. Mr Dent stated that he did not have any such evidence.
- Members of the Committee raised the following queries:-
- In response to a query from a Member, Mr Dent confirmed that it was due to his experience in his role that he had identified products at the premises which he would have expected to be priced more highly.
- It was queried whether there were any legitimate suppliers, registered with AWRS, of Polish beers. Mr Dent confirmed that there were.
- On that point, a Committee Member asked whether it was fair to say that the majority of responsible retailer would have checked the website to confirm which wholesalers were registered and that registered wholesalers would display information regarding AWRS within their premises. Mr Dent confirmed this to be the case and added that Cash and Carries advertised the scheme on their premises.
- It was queried whether BD Wholesale had ceased trading. Mr Dent stated that BD Wholesale had notified HMRC that they would cease to trade in January/February 2017 as their AWRS application was refused. They appealed the decision but the decision to refuse was upheld. The Company was dissolved one month ago.
- The Council's legal representative raised the following issues:-
- It was queried what penalty had been issued against the Premises Licence Holder/DPS. Mr Dent responded that £458 excise duty was issued covering the amount of duty on the amount of stock the trader said that he had purchased.
- Mr Dent confirmed that a civil penalty was issued to the business, MK Convenience, in the sum of £200, for wrong-doing and that the business owner had paid this fine.
- Reference was made the invoice produced and it was queried whether Mr Dent was aware of the reasons as to why BD Wholesale was refused registration to the AWRS. Mr Dent stated that he was not party to the reasons for refusal but was aware that the Company was deemed not to be fit and proper.

#### Public Health

The applicant's legal representative called upon Fiona Helyer, Public Health. The Public Health Officer confirmed that the content of her statement, on behalf of the Director of Public Health, attached at Appendix 3, was correct.

The applicant's legal representative asked the Public Health Officer to clarify whether the reference to the introduction of AWRS in her statement ("...The purpose of the exercise was to check compliance with licensing, trading standards and HMRC's Alcohol Wholesaler Registration Scheme (AWRS) requirements introduced on 1 April 2017.") related to Wholesalers. The Public Health Officer confirmed that this was the case.

The applicant's legal representative queried what information was provided to the premises in relation to the AWRS. The Public Health Officer confirmed that the management of the premises was made aware of the AWRS scheme by HMRC during meetings held with them. The information regarding AWRS on the HMRC website (copy attached at FMH/2 of Appendix 3) was printed and taken into all licensed premises to raise awareness of the scheme.

It was queried whether the AWRS information (FMH/2) was taken to this particular premises. The public health officer confirmed that a public health and public protection compliance officer attended the premises on 22 May 2017 as part of multi-agency work to complete a High Strength Alcohol Survey (attached at FMH/1) and provided the information regarding AWRS at this visit. This would have assisted the premises licence holder/DPS had they not already been aware of the scheme.

When asked what concerns Public Health had in relation to the premises, the Officer stated that there was a potential public health risk where products on sale to the public could not be traced. There were existing alcohol-related health issues in Middlesbrough and, as a result, alcohol-related information had been collected from off-licensed premises across the town since 2014 to examine the availability of high risk products. Alcohol products deemed to be high risk were those with a high alcohol by volume (ABV) content (generally those above 6.5% ABV). There were links between the availability of high strength, cheap alcohol and anti-social behaviour and crime and disorder. Through liaison with treatment services, it was established that such products were desirable to dependent, street drinkers and chaotic drinkers. For example, one 500ml can of Karpackie (Polish beer), with an ABV of 9%, contained 4.5 units of alcohol and was on sale at the premises for £1.25.

The Public Health Officer was asked to explain what effect the sale of such types of alcohol would have in the area where the premises was situated. The Public Health Officer responded that it had a big impact on the NHS through alcohol-related admissions and there had been an increase in demand for treatment services for alcohol dependency. There had been 18 deaths since April 2017 that were attributable to alcohol so it was a real concern.

The Officer highlighted that there had been a switch in the type of alcohol sold from the premises over time. During the visit to the premises on 22 May 2017 to undertake the 'High Strength Alcohol Survey', the visiting Officer (G Kerr) noted that the premise was selling Perry products which was a breach of the premises licensing conditions.

The applicant's legal representative asked the Public Health Officer, in her experience, what feedback she had received in relation to how the premises was being run. The Officer stated that since the joint exercise was undertaken there had been a lot of changes in the management of the premises. She stated that in previous dealings with Mr Pratt she had always found him to be fine but she had found breaches of licensing conditions, however, the concern today was the purchase of untraceable alcohol from a van which was a potential health risk.

#### Questions

All parties were afforded the opportunity to ask questions of the Public Health Officer. The Premises Licence Holder's legal representative raised the following issues:-

In response to a question, the Public Health Officer clarified that a visit to the premises by a Public Health Officer, G Kirk, took place on 22 May 2017 and an information leaflet on the AWRS scheme was left at the premises.

However, prior to the visit, meetings had been held with HMRC and Trading Standards providing information.

The Premises Licence Holder's legal representative asked if it was correct that the Public Health Officer's first contact with the premises in relation to the AWRS was on 22 May, seven weeks after the scheme came into effect. The Public Health Officer confirmed that this was correct but highlighted that the majority of licensed premises used established wholesalers who would have provided information on AWRS.

The legal representative referred to the Officer's comments regarding concerns in relation to the high strength alcohol on sale at the premises and also the sale of Perry and it was queried whether there was a condition on the licence prohibiting the sale of such products. The Officer responded that at Annex 2 of the Premises Licence, condition 7) stated "No Perry to be sold from the premises at any time." It was confirmed that the licence did not include a condition regarding a limit on the ABV of alcohol being sold. The Officer clarified that the purpose of her mentioning the sale of high strength products was because of the survey work being undertaken at all off licensed premises in Middlesbrough as high strength products, generally above 6.5% ABV caused the most issues in terms of alcohol-related harms.

Clarification was sought in relation to the Officer's comments regarding previous dealings with Mr Pratt and the concerns regarding the 'white van'. The Officer stated that she had previously

been employed as a Licensing Enforcement Officer prior to 2014 and that there had been breaches of licensing conditions at the premises, such as issues with the CCTV system. The Officer stated she had also encountered Mr Pratt prior to her time as a Licensing Enforcement Officer in her previous capacity as a Police Officer.

Members of the Committee raised the following issues:-

- In response to a query, the Public Health Officer confirmed that, in her experience in her current role and previous roles as a Police Officer and a Licensing Enforcement Officer, attention would be drawn to high strength, low priced alcohol.
- Reference was made to Karpackie beer which was noted to be 9% ABV and it was queried whether this product would be legitimately sold from an AWRS registered wholesalers. It was confirmed that the product was available from some AWRS registered wholesalers.
- It was queried what concerns the Officer had in relation to the area that the premises was situated in. The Public Health Officer responded that since 2014 work had been carried out across the town to gather intelligence on alcohol for sale in off licensed premises. In 2017 the Longlands and Beechwood Ward of Middlesbrough was deemed a Cumulative Impact Area due to the high volume of anti-social behaviour, crime and disorder and number of hospital admissions. Longlands and Beechwood Ward, together with four other Wards in Middlesbrough, was included within the Council's Cumulative Impact Policy (CIP), therefore, anyone applying for a premises licence within a CIP area would need to be aware that the normal position for applications in a CIP zone would be refusal.

Licensing Authority

The applicant's legal representative called upon Neil Williams, Licensing Officer. The Licensing Officer confirmed that the content of his statement, attached at Appendix 5, was correct.

When asked what his concerns were in relation to the premises, the Licensing Officer stated that the four licensing objectives were not being adhered to. Alcohol had been purchased from a 'white van' and this would not be the behaviour expected of a responsible retailer. In addition, a responsible retailer would be expected to be aware of their obligations under the law.

Reference was made to the Premises Licence in respect of the subject premises and the Licensing Officer confirmed that the premises had a number of conditions on its licence and that these should be complied with to uphold the licensing objectives.

The applicant's legal representative referred to the list of conditions attached to the premises licence for enforcement purposes. On visits to the premises on 11 and 15 May 2013 it was discovered that CCTV footage was not being held for 31 days and that there was no DPS recorded on the Premises Licence despite alcohol being sold from the premises. At that time, Mr Pratt was the Premises licence holder and he subsequently became the DPS. The Licensing Officer confirmed that a further visit to the premises was undertaken on 28 September 2013 and the retention of CCTV condition was still not being complied with. A further visit on 21 August 2014 established that all matters, including the CCTV retention, had been rectified.

During a visit on 2 February 2015, the premises was found to be in breach of several conditions. It was queried whether there were still issues with the CCTV. The Licensing Officer stated it was difficult to establish whether the system was being operated in accordance with the conditions as staff at the premises were unable to operate it. In addition 'Challenge 21' posters were not on display and Part A of the premises licence could not be produced by staff. These were mandatory conditions. Staff were also unable to produce staff training records. The premises was again visited on 19 March 2015 and, again, staff were unable to produce Part A of the licence or produce staff training records. Warnings were issued in respect of the breaches and advice was given. When Police visited the premises in June 2015, all matters

had been rectified.

In response to a query, the Licensing Officer confirmed that during a visit on 10 October 2017, licence conditions were again being breached - unable to produce Part A; unable to produce training records; no incident book, non-retention of CCTV footage for 31 days; Perry products on sale. It was queried whether anyone had taken responsibility for the sale of Perry products at the premises. The Licensing Officer replied that no-one had taken responsibility. He added that the licence had never been given the attention it deserved and he was concerned that management were putting profit before the licensing objectives and public safety. The conditions attached to the licence were not difficult to comply with. During each of the inspection visits, Mr Pratt had not been present and had to be called. It was of further concern that Mr Pratt had advised that Ms Nivens provided the staff training, although she had not obtained her Personal Licence, and that Mr Finnegan had stated that they did not provide staff training as they only employed staff who had worked in shops previously.

The Licensing Officer was asked who was in charge of the premises, to which he responded that it was not clear. Mr Pratt was in charge on paper, however, he was never present at the premises. It was concerning that no-one appeared to know who was running the premises.

#### Questions

All parties were afforded the opportunity to ask questions of the Licensing Officer. The Premises Licence Holder's legal representative raised the following issues:-

- The Premises Licence Holder's legal representative asked whether the Licensing Officer had revisited the premises since the review proceedings were instigated in November 2017. The Licensing Officer confirmed that he had attended to check for compliance following the 10 October 2017 inspection. The legal representative asked whether the Licensing Officer had visited the premises since 5 November 2017 to which he responded that he was unsure.
- Clarification was sought as to whether it was being suggested that there had been non-compliance with the Challenge 21 scheme and that customers under 21 had not been asked for adequate ID when purchasing alcohol. The Licensing Officer stated that there were no posters on display at the premises which was a condition of the licence.
- The legal representative made reference to the CCTV system and the non-retention of footage for 31 days and it was highlighted that there had been problems an electrical unit outside of the shop which was damaged by vehicles on several occasions. The Licensing Officer stated that he had been informed in April 2016 that an electrical unit outside the premises had been damaged. The legal representative stated that the Police had regularly been informed that the footage was not being retained for the full 31 days. The Licensing Officer stated that it was retaining footage for 27 days at his last visit.
- In response to a question, the Licensing Officer confirmed that he had seen the commendation from the Police in relation to the CCTV and added that the CCTV footage was of good quality and that the location of the cameras was good, the issue had been that it was not retaining footage for the required 31 days.
- It was queried whether the inspections were announced or unannounced. The Licensing Officer confirmed that the compliance inspections were unannounced.
- Reference was made to the unavailability of training records and it was queried whether additional time was provided for the records to be produced. The Licensing Officer explained that where all compliance checks were met, the inspection report would be signed and a copy left at the premises. Where an issue was found not to be compliant, the steps being taken would be listed and the premises would be revisited. The Officer did not have copies of those documents at the meeting, however, assured that the information provided in his statement was taken from the reports and was correct.

Members of the Committee raised the following issues:-

- A Member of the Committee highlighted that between 20 August 2013 and 10 October 2017 there had been seven visits to the premises and breaches of licence conditions were found on each occasion. It was queried whether this was down to poor management of the premises. The Licensing Officer responded that, in his opinion, the premises was poorly managed and that he had concerns.
- Reference was made to the incident book and whether it was usually available for inspection at the premises and whether any issues with the CCTV system should be recorded in the book. The Licensing Officer replied that the incident book should be available at all times and that the Licensing Section and Cleveland Police advised premises to record details of any problems with the CCTV system in the incident book so that there was always a record of any issues, however, this advice was not always followed.
- Reference was made to the 'Challenge 21' scheme and it was queried whether there was any evidence to suggest that the scheme was not being operated at the premises. The Licensing Officer responded that there was no mention of a refusals book not being kept or completed, therefore, there was no evidence that the scheme was not being operated at the premises.
- With regard to Part A of the Premises Licence and staff training records not being available for inspection it was queried whether this had now been rectified. The Licensing Officer advised that, following the visit on 10 October 2017 when these breaches were discovered, the premises would have been subsequently visited and was found to be compliant.

#### Cleveland Police

The applicant's legal representative called upon PC Price, Cleveland Police. PC Price confirmed that the content of her statement, attached at Appendix 4, was correct.

When asked what her concerns were in relation to the premises, PC Price stated that it was of concern to the Police that alcohol had been purchased from a van and that there was no traceability of the alcohol as this could potentially have health implications. The Police would expect a Premises Licence holder to comply with the Premises Licence as granted, ie to comply with all of the conditions placed on the licence and to comply with the law.

The applicant's legal representative highlighted that on 10 October 2017, PC Arbuckle and N Williams (Licensing Officer) visited the premises and that Mr Finnegan had advised that he was the manager. It was queried whether there were issues with regard to who was in charge. PC Price responded that it was confusing as to who was actually running the premises. Mr Pratt was the DPS, however, Mr Finnegan appeared to be the person trying to sort things out. It was unclear as to who had control of the premises and, in her opinion, this was impacting on the premises. The premises was located in an area suffering with high crime and disorder and when a premise was found not to be complying it often became the focus for dependent drinkers who go on to cause anti-social behaviour.

The applicant's legal representative highlighted that during the visit to the premises on 10 October 2017, the premises was found to be in breach of several conditions, including no sale of Perry at any time. Photographs (attached at EJP/2 within Appendix 4) showed the products that were on sale. When asked whether this was a difficult condition to comply with, PC Price replied that it was not. In addition, during the same visit, the CCTV system was found not to be retaining footage for 31 days, which was also a condition on the licence. There was no incident book or staff training records at the premises and the refusals book mainly related to the sale of cigarettes. PC Price stated that there had been issues previously at the premises and that the today's hearing related to the seizure of alcohol and issues of conditions not being adhered to.

The applicant's legal representative referred to the meeting at the premises, on 19 October 2017, between N Williams, PC Price and Mr Pratt, the Premises Licence Holder. At that meeting Mr Pratt advised that further CCTV was being installed on 20 October to extend the time stored to beyond the 31 required days. Reference had been made earlier in the Hearing to an electrical fault outside the shop which had been the reason for the issues with the CCTV system and it was queried whether Mr Pratt had alluded to this. PC Price confirmed that the

first she had heard of the electrical fault was at the start of the review proceedings.

It was highlighted that training of staff had been undertaken by a person without a Personal Licence and it was queried what concerns this would raise. PC Price advised that the staff working at the premises had worked in other stores but that all staff should be trained by a Personal Licence holder. PC Price added that she had concerns with both Mr Finnegan and Mr Pratt regarding their ability to run the premises correctly and to adhere to the conditions on the licence.

It was queried whether Ms Nivens had any control over the premises. PC Price responded that Ms Nivens was unable to answer any of the queries.

It was noted that the premises had been selling Perry products in May 2015 when the premises was inspected and that Mr Pratt was advised to remove the products from sale. It was queried whether it would be fair to assume that the licence holder should have been aware that the sale such products were prohibited by condition on the licence. PC Price accepted that mistakes could be made and that this could have been a 'one-off', however, three years later Perry was again being sold from the premises. This condition should have been easy to comply with.

Reference was made to the visit to the premises on 11 November 2017 by Sergeant Higgins when he documented a selection of high strength beers and lagers on display, much of which was not priced. However, he noted that 3 Hammers cider (7.5% abv) was on sale for what equated to 18p per unit and Frosty Jacks cider (7.5% above) was on sale for 20p per unit. PC Price clarified that such products, being high strength and low in price, did cause issues in areas with high levels of anti-social behaviour and crime and disorder as they attracted dependent drinkers who went on to cause such issues. PC Price had provided a snapshot of incidents that had occurred in the area. Whilst they were not directly linked to the premises, the incidents intended to demonstrate the issue caused by high strength, cheap alcohol.

#### Questions

All parties were afforded the opportunity to ask questions of the Police. The Premises Licence Holder's legal representative raised the following issues:-

- In response to a query as to when Cleveland Police last visited the premises, PC Price confirmed that she had visited on 19 October 2017.
- It was queried whether the Police had felt sufficiently concerned about the premises to have cause to visit again over the Christmas period. Sergeant Higgins advised that he had visited the premises again with Trading Standards and HMRC in February 2018 and confirmed that the licence conditions were being complied with.
- Reference was made to the store being a 'Premier Store' which was a national franchise. PC Price stated that, in relation to the sale of Perry products from the premises, staff had explained that goods were sent to the store from a base and that Perry had been a portion of the goods sent to the store so staff had presumed that they were able to sell it.
- The Premises Licence Holder's legal representative referred to PC Price's concerns regarding Mr Pratt's ability to uphold the licensing objectives and noted the information provided by Sergeant Higgins' regarding the sale of high strength, low priced alcohol. However, it was highlighted that there was no condition on the licence preventing the sale of high abs products, therefore, there was no breach in respect of the sale of such products. PC Price accepted this but stated the information was provided to give an idea of how the business was operating.
- The legal representative stated it was unfair to 'have a go' at the premises for selling high strength beer and lager when there was no condition on the licence to prohibit them from doing so. PC Price reiterated that the purpose was to demonstrate how the premises had been and was operating.
- In response to a query regarding the incidents highlighted in PC Price's statement, it was confirmed that they did not relate directly to the premises and that they had been included to provide a flavour of the types of alcohol-fuelled incidents that occurred in the area.

## Members of the Committee

- Members of the Committee raised the following issues:-
- It was queried whether it was established who was actually in charge of the premises. PC Price stated that during her visit in October 2017, staff in the shop had contacted Mr Finnegan to come to the store and she believed that Mr Finnegan was running the premises. PC Price added that she was unclear as to Mr Pratt's involvement in the premises and had not met him previously at the premises.

**\*\* ADJOURNMENT**

Having heard all of the evidence from the applicant, the Committee adjourned at 11.45am and would reconvene at 12.30pm.

**\*\* RECONVENED MEETING**

At 12.30pm the meeting reconvened.

## Premises Licence Holder in Attendance

The Premises Licence Holder's legal representative, accompanied by Mr Pratt, Mr Finnegan, Ms Nevison and Mr Hodgson, presented the case in support of the Premises Licence Holder.  
Premises Licence Holder - Mr Pratt

The legal representative asked Mr Pratt a number of questions to which he responded. Mr Pratt confirmed that he was the current Premises Licence Holder for the premises and that this had been the case since the shop opened in the summer of 2013.

The legal representative highlighted that the Committee had heard evidence of problems with the premises breaching the conditions of its licence. Mr Pratt stated that he could not argue with the facts and that there had been problems as he had 'taken his eye off the ball'. Mr Pratt explained that he had sold his own home to move in with his elderly parents in order to care for them as they were ill. His father had stopped driving around 18 months ago and Mr Pratt stated that he took them for all of their appointments and shopping, etc. As a consequence he had neglected the shop and left other people in charge.

The legal representative referred to the 'man in a van' selling alcohol and asked Mr Pratt what he knew about this. Mr Pratt stated that vans often called at the shop trying to sell sweets, cigarettes and alcohol, however, he had not been present when the alcohol was purchased from the van. He stated that Mr Finnegan and another person had bought the goods from the white van (the alcohol confiscated during the HMRC inspection).

In response to a question, Mr Pratt replied that Mr Finnegan had not informed him that he was going to purchase the alcohol and stated that there was a larger amount purchased than had been seized by HMRC.

The legal representative stated that Mr Pratt had met with Mr Dent from HMRC and had admitted that more alcohol was purchased from the white van than had been seized by HMRC and asked what fine had been imposed. Mr Pratt stated that he was issued with a fixed penalty of £458 and another fine. Mr Dent clarified that £458 was the amount of unpaid excise duty and a further £200 civil penalty was also issued.

The Premises Licence Holder's legal representative asked whether it was correct that there had been intermittent problems with the CCTV system. Mr Pratt responded that the first CCTV system that was installed at the shop was a good quality system but only retained footage for 28 days. When he was told that it needed to retain footage for 31 days, the system was upgraded. He stated that there had been problems with an electricity box outside of the shop which was often bumped into by cars and that this caused problems with the internet and cameras at the premises. However, the CCTV system had now been upgraded and would

retain footage for 60 days so there should be no further issues in that respect.

The legal representative asked whether the Police sometimes used the footage from the premises CCTV system to assist them various issues. Mr Pratt stated that the Police made regular visits to the premises regarding crimes in the area. One of the premises' CCTV cameras covered the road outside the store and the store had assisted Police with many of their enquiries by providing CCTV footage of the road outside in relation to thefts and a murder.

The legal representative referred to the store's suppliers and asked Mr Pratt to clarify the sign at the shop 'Premier'. Mr Pratt explained that Premier was a franchise under the Booker umbrella. The supplier would send pallets of discounted products to be sold in the store, such as washing power and grocery items. The discounted pallets also contained advertisements for the special offers for display in the shop.

The legal representative referred to the concerns raised regarding the sale of Perry from the premises. Mr Pratt stated that they had been confused as to what Perry was, initially being advised that it was Lambrini, then pear cider, but he stated they were now aware of the products they were not allowed to sell and had removed them from the shelves.

The legal representative asked Mr Pratt what his plans were for the store. Mr Pratt stated that he would not be able to have any involvement with the premises and that the role of DPS had now transferred to Ms Nivens. The premises had enlisted the assistance of Mr Hodgson from D&B Licensing who was helping to put everything in order.

The legal representative asked Mr Pratt what he did when the application for review of the Premises Licence was submitted. Mr Pratt advised that he had spoken to Mr Finnegan to say that he could not continue to be involved with the premises and had contacted Mr Hodgson who had sent staff on an alcohol awareness course.

Mr Pratt apologised to those present for the poor running of the premises and stated it had all been down to him.

Questions

All parties were afforded the opportunity to ask questions of the Premises Licence Holder. The applicant's legal representative raised the following issues:-

The applicant's legal representative sought clarification as to whether Mr Pratt was still the Premises Licence Holder. Mr Pratt confirmed that he had been the DPS and that this had now transferred to Ms Nivens. He continued to be the Premises Licence Holder, however, an application had been made to transfer the Premises Licence but the Police had made objections.

When asked if Mr Pratt's role was as a tenant at the premises he stated that he was not a tenant but the Premises Licence Holder. He added that once the Premises Licence transferred he would have nothing more to do with the premises and accepted that he had not provided staff with proper training.

It was noted that the shop had opened in May 2013 and that alcohol was on sale despite there being no DPS in place at that time. Mr Pratt stated that he had completed a course and had not realised the level of responsibility required, hence the number of problems at the store over the last four years.

The applicant's legal representative asked why Mr Pratt had not notified the Police that there were problems with the CCTV system. Mr Pratt replied that he thought that he had notified the Police.

Mr Pratt was asked why he had not recorded the problems in any paperwork, such as the incident book, which may have protected him. Mr Pratt accepted that he should have done so and passed the information on to staff.

The legal representative asked Mr Pratt what his relationship was with Mr Finnegan. He replied that they were friends and ex business partners. Mr Pratt was asked whether they had

gone into the shop together to which Mr Pratt replied that Mr Finnegan owned the building and Mr Pratt had taken on the running of the shop.

The legal representative highlighted that Mr Finnegan had been present at the premises a lot of the time when visits had been made by the responsible authorities and asked what Mr Finnegan's role was at the shop. Mr Pratt stated Mr Finnegan was the owner and that he had an office at the back of the shop.

Mr Pratt was asked what Ms Nivens' role was at the shop and how long he had known her. Mr Pratt stated that they had been friends for more than 20 years and that Ms Nivens now had full control of the shop as she became the DPS following the white van incident. He added that she had worked in the shop for approximately six months prior to the incident.

The legal representative queried whether Ms Nivens had initially come into the shop to help out. Mr Pratt confirmed that this was the case and stated that they had had a lot of staff and it was difficult to find trustworthy people.

The applicant's legal representative commented that it was very irresponsible to have purchased goods from the white van. Mr Pratt agreed but replied that he had not made the purchases.

It was queried whether a key factor in making the purchases had been due to the low prices offered by the white van. Mr Pratt replied that the van offered keen prices.

The legal representative queried whether Mr Pratt had made Ms Nivens aware of the issues with the CCTV; the issues with Part A of the licence; and the conditions on the licence. Mr Pratt confirmed that he had not.

It was queried whether Mr Pratt had made Ms Nivens aware of the 'Challenge 21' scheme in operation at the premises. Mr Pratt responded that he had and that the staff were aware that they could not serve underage people and that they knew most of the customers who came into the shop and who they could and could not serve.

Mr Pratt was asked whether he was aware of the requirement to display challenge 21 posters on the premises. Mr Pratt stated that he possibly knew about the requirement but that he was not at the store all the time.

When asked if he had made Ms Nivens aware of staff training records, he responded that he had not. The legal representative queried who had been signing off the staff training records. Mr Pratt responded that no-one had been signing the records and that if the records were requested during an inspection visit, they would add a couple of entries in but nothing further was mentioned.

The legal representative sought clarification by asking whether it was correct that when someone said that they were not doing something, they would quickly try to do something in order to comply. Mr Pratt confirmed this was the case.

The legal representative asked whether, as part of the Premier chain, the store's goods were distributed directly from Bookers. Mr Pratt confirmed this was correct. It was put to Mr Pratt that this meant there was no need to purchase goods from the white van. Mr Pratt confirmed that this was also correct. When asked if they had been looking to make money from a third party Mr Pratt responded 'yes'.

With regard to the sale of Perry products, it was queried whether Mr Pratt had sought advice regarding this. Mr Pratt stated that the shop received around 30 loaded pallets per week and that Premier had advised that they should send back the products they were permitted from selling. The legal representative asked why they had not done this in relation to the Perry products. Mr Pratt stated that they had just been put out on the shelves. When asked who had put the products on the shelves Mr Pratt replied that it was done by whoever was stocking the shelves at the time. The legal representative queried whether Mr Finnegan or Ms Nivens had provided staff with guidance around this. Mr Pratt responded that they had since the incident with HMRC.

## Members of the Committee

Members of the Committee raised the following issues:-

- It was queried how many staff worked in the shop. Mr Pratt responded that he was unsure how many people worked there at the moment but thought it was approximately five.
- In response to a question regarding the turnover of staff and staff training, Mr Pratt stated that there was a high turnover of staff and that staff had not received training until now but they had all now been trained.
- A Member queried whether Mr Pratt had assumed that the staff were fully aware of their obligations. Mr Pratt advised that the staff they employed had usually been recommended to them and were given a trial to see how they got on. It was queried whether the staff were given an idea of what to expect. Mr Pratt replied that staff were told the basics such as not to serve anyone that looked under the age of 21.
- A Member of the Committee asked Mr Pratt when the shop had started trading and how the franchise worked. Mr Pratt stated that the shop had started trading in 2013. They had applied to Premier for the franchise which had then been granted.
- It was queried whether, as a franchisee, they were expected to use their wholesaler, Bookers, for their stock. Mr Pratt responded that they were asked to use their wholesaler for and 80% minimum of their stock.
- Mr Pratt was asked whether any of the staff were aware of the conditions on the premises licence. Mr Pratt stated that they were not and that it was all down to him.
- The Council's legal representative sought clarification in relation to the dates when the premises licence was granted and when Mr Pratt became the DPS for the premises. The report stated that the premises licence was granted in September 2012 but during the visit to the premises in May 2013 it was identified that there was no DPS.

\*\* The Licensing Manager withdrew from the meeting at this point in order to obtain this information and all parties agreed that the Hearing should continue whilst the information was being obtained.

When the Licensing Manager subsequently returned to the meeting, he confirmed that the premises had been operating with a Premises licence since 19 March 2008 and that this was transferred to Mr Pratt on 20 September 2012. During an inspection on 11 May 2013 by Licensing Officers, it was discovered that there was no DPS recorded on the Premises Licence but alcohol was on sale. A warning was issued to the Premises Licence Holder and advice provided by Officers. As a result of this, on 15 May 2013, an application was made to add the DPS (Mr Pratt) to the licence. Therefore, between September 2012 and May 2013 there was no DPS for the premises. It was highlighted that Mr Pratt was issued with his Personal Licence by Stockton Council in November 2012.

## Mr Finnegan

The Premises Licence Holder's legal representative called upon Mr Finnegan and asked him to explain his concern in the business. Mr Finnegan explained that he was the owner of the building and had been since 2007. He stated that the building was previously derelict and attracted youths hanging around. It consisted of shops with flats above and he had brought it back into use.

The legal representative asked what kind of area the premises was located in. Mr Finnegan stated that it was a rough estate and that he had tried to clean the area up. He felt the shop had helped to regenerate the area in the five years that it had been open.

The legal representative asked what Mr Finnegan's relationship was with Mr Pratt. Mr Finnegan stated that they had been friends for years. Mr Pratt had been looking after a friend's shop so he had put him in charge of this shop in 2013 without any problems. In response to a query regarding his invo

vement in the running of the premises, Mr Finnegan stated that he had put Mr Pratt in charge of the premises and that he had no involvement in the running of the premises until the trouble had started. The first time he was aware of any issues was when HMRC had attended the premises as part of the joint inspection.

The legal representative asked Mr Finnegan to explain the 'white van'. Mr Finnegan explained that people had been coming into the shop asking for Polish lager so when the man in the van had come to the shop and had it for sale, and had said that it was legitimate, then he and another employee had bought goods from him. Mr Finnegan added that he was not aware of the AWRS scheme.

With reference to the Polish lager that he purchased, Mr Finnegan was asked whether the price appeared to be cheap. Mr Finnegan responded that he did not know as it was not on sale in Bookers but the white van man had told him that he was delivering it to other shops in the area.

The legal representative asked Mr Finnegan whether the receipt for the goods was genuine. Mr Finnegan replied that it was as far as he was aware otherwise he would not have made the purchase.

The legal representative queried what HMRC had done when they visited the premises. Mr Finnegan stated that they had checked the invoices for the alcohol.

With regard to Mr Finnegan's earlier response that he was not aware of the AWRS, it was highlighted that it came into effect in April 2017 and, in response to a query, Mr Finnegan stated that he would not have made the purchases had he been aware of the scheme.

Mr Finnegan was asked how much control he had over the business in the time leading up to the review proceedings. Mr Finnegan responded that he had recently suffered a heart attack and was waiting for an operation and that Mr Pratt had been in charge. He was asked to clarify what control he had at the premises prior to October 2017. Mr Finnegan stated that he had no control as Mr Pratt had been running the shop and that when he found out the licence was going to be reviewed he had been trying to everything right. In response to a query, Mr Finnegan confirmed that Ms Nivens was his partner and that he had put her in charge of the premises.

The legal representative highlighted that Mr Finnegan had applied for the Premises Licence to be transferred to himself, however, the application had been withdrawn. Mr Finnegan confirmed that this was the case but that he had withdrawn the application due to becoming ill and that he did not need any stress. In response to a query, Mr Finnegan confirmed that a further application had been made to transfer the Premises Licence to Ms Nivens but that the Police had objected.

#### Questions from the Applicant

All parties were afforded the opportunity to ask questions of Mr Finnegan and the applicant's legal representative raised the following issues:-

- In response to the question who had made the purchase from the white van man, Mr Finnegan replied that he had. When asked if this was in conjunction with Mr Pratt he responded no.
- The applicant's legal representative referred to the date on the invoice that had been produced, April 2017, and stated that Mr Finnegan must have been in control at that time in order to make the purchases. He agreed that this was the case. The legal representative queried when Mr Finnegan had first gone into the premises and started making decisions. Mr Finnegan stated that he had gone in when he realised that Mr Pratt was not doing a proper job and that this was when Mr Pratt had started to look after his parents who were ill.
- The applicant's legal representative highlighted that there had been problems at the premises since 2013 and queried whether Mr Pratt had ever made him aware that

there had been compliance issues at the premises. Mr Finnegan stated that if he had known he would have gone into the premises to put things right.

- The applicant's legal representative noted that within the documentation, a Mr Ward was named as making the purchase from the white van and clarification was sought as to who he was. Mr Finnegan advised that Mr Ward was an employee at the premises and that Mr Ward had made the purchase from the white van but that he had been present. The legal representative asked Mr Finnegan whether he was involved with the purchase of the alcohol to which he replied that he was.
- It was queried whether Mr Finnegan understood VAT and excise duty to which he responded 'no'. He added that he would not have made the purchase if he had thought the goods were not legitimate.
- The legal representative stated that Mr Finnegan had alluded to a demand for Polish lager and that he had wanted to compete with other premises. She asked Mr Finnegan whether it had not set alarm bells ringing when he was unable to find the products on sale in a legitimate wholesaler and that he had put profit and demand above the law. Mr Finnegan stated that when he had spoken to people in the wholesalers they had informed him that they were delivering in the area.
- In response to a query, Mr Finnegan stated that he had not been aware of the conditions on the Premises Licence, but he was now aware. The legal representative asked whether he had not considered it important to make himself aware of the conditions in his capacity as owner of the business. Mr Finnegan responded that he had thought Mr Pratt was capable of running the business.
- Mr Finnegan was asked when he became aware of the conditions on the Premises licence to which he replied he became aware when the application to review the licence was made.
- The legal representative asked whether it would have been sensible to have been aware of the conditions as Mr Finnegan had been making purchasing decisions in April 2017. Mr Finnegan replied that he had left the purchasing to Mr Ward. The legal representative commented that it was a big responsibility to give to an untrained member of staff.
- In response to questions regarding roles at the premises, Mr Finnegan advised that Ms Nivens was now in control of the premises and that his role was owner of the building and that he had nothing to do with the running of the premises.
- When asked what advice, if any, Mr Finnegan had given to Ms Nivens regarding the running of the premises, he stated that he had advised her to 'do the job properly'. The legal representative asked whether this was the advice he had given to Mr Pratt. Mr Finnegan stated that he had not realised Mr Pratt was in trouble.
- It was queried whether Mr Finnegan let out the flats above the shop to which he responded that some of the flats were let out and had been leased to private tenants for the past five to six years. The legal representative stated that Mr Finnegan had previously told HMRC that no-one lived above the premises, however, he was now informing the Committee that there were tenants above the shop.
- The Premises Licence Holder's legal representative sought clarification as to where this line of questioning was leading. Sergeant Higgins explained that Mr Finnegan was not present at the premises when the Police visited in February. There were no issues with compliance with the conditions or AWRS at that time, however, there were concerns regarding the flats above the shop in relation to fire safety. Ms Nivens had stated that there were people living in the flats. Sergeant Higgins had referred the matter to the Fire Officer who subsequently met with Mr Finnegan and Mr Finnegan advised the Fire Officer that no-one lived there. Mr Finnegan responded that there were three flats above the shop and that one of the flats was occupied.
- Sergeant Higgins informed the Committee that there were seven or eight flats above the parade of shops and that Mr Finnegan was saying that people were living in the flats above the other shops. Mr Finnegan stated that one was empty and two were occupied.
- The applicant's legal representative stated that she would take the point no further but had simply wished to seek clarification on the matter.
- The applicant's legal representative referred to the issues with the CCTV when the Police had requested to view footage. Staff had not been aware how to operate the system and 'Gary' had to be called. It was queried who Gary was. Mr Finnegan stated that he worked in the shop. The legal representative highlighted that there were

approximately five members of staff and that they should all have been aware how to operate the CCTV system. Mr Finnegan stated that he had made them aware. When asked if Ms Nivens had been made aware of how to operate the system, Mr Finnegan responded that she had.

#### Members of the Committee

Members of the Committee raised the following issues:-

A Member of the Committee referred to Mr Finnegan's responses to the questions regarding the day to day running of the shop and the purchase from the white van which appeared contradictory in that Mr Finnegan had stated he had nothing to do with the day to day running of the shop but had then stated that his customers had been asking for Polish lager and he had not been able to purchase it from the wholesaler. Mr Finnegan was asked how he would have known this unless he was involved with running the premises. Mr Finnegan responded that he was with a member of staff, Mr Ward, who had been looking for Polish lager and had then asked Mr Finnegan if he could purchase it from the white van and Mr Finnegan had said that he could.

- It was queried who was responsible for staff training. Mr Finnegan stated that since Ms Nivens had taken charge of the shop, she had ensured that the staff went on the appropriate training course and that some staff had now left and had been replaced. Mr Finnegan reiterated that he was ill and wanted nothing to do with the shop.
- It was noted that Mr Finnegan had been called to the shop when other staff had been unable to make contact with Mr Pratt. Mr Finnegan stated that he and another member of staff had assisted the Police by providing evidence from the premises CCTV system which resulted in a murderer being convicted.
- Reference was made to the issues with the CCTV when licensing officers had visited the premises. Mr Finnegan stated that they had experienced difficulties with the box outside the store on a number of occasions and it could interrupt the power supply when it was knocked. He stated that he had information the Police on a number of occasions about the issue.
- A Member of the Committee stated that the Committee was trying to establish Mr Finnegan's role in the premises and asked whether he had anything at all to do with running the premises. Mr Finnegan replied that he did not.
- Mr Finnegan was asked whether he had been aware that purchasing alcohol from the white van was not above board. Mr Finnegan stated that he was not aware as the other employee at the shop had told him about the van selling various goods in the area.
- When asked if he had given authority to the employee to purchase from the white van, despite not being the Premises Licence Holder, Mr Finnegan confirmed that he had and stated that he should have checked the receipt properly.
- It was queried whether Mr Finnegan visited the shop on a daily basis and whether Mr Ward still worked there. Mr Finnegan replied that he did not visit the shop daily and that Mr Ward no longer worked there.
- The Council's legal representative asked whether Mr Ward was aware of the white van making deliveries in the area and whether he had taken previous deliveries prior to the incident involving HMRC. Mr Finnegan stated that Mr Ward had been aware of the van making deliveries and that he had taken previous deliveries.

#### Ms Nivens

The Premises Licence Holder's legal representative called upon Ms Nivens and asked her to confirm where she lived. Ms Nivens advised that she lived in a flat near to the shop and had been there for five years. Prior to that she had lived in the Saltersgill area for more than 40 years.

When asked what retail experience she had, Ms Nivens informed that she had more than 20 years retail experience and had worked in clothes shops, hotels and bars.

The legal representative asked Ms Nivens what her connection was with these premises. Ms Nivens responded that she was the DPS but prior to the incident she had helped out in the shop.

The legal representative asked how long Ms Nivens had been helping out in the shop. Ms Nivens explained that she had started helping out around six to seven months ago and that Mr Finnegan had asked her if she wanted to take over as the premises had not been run properly. Mr Pratt had kept things to himself and was never there. When asked how long Ms Nivens had been the DPS at the premises she stated that she had been DPS since November 2017.

The legal representative asked Ms Nivens about the area the premises was situated in. Ms Nivens commented that it was quite a friendly neighbourhood but a bit run-down. She had not seen any problems and added that they would take shopping home for the old people who lived across the road.

When asked how many staff worked at the premises, Ms Nivens replied there were six or seven and that she was generally in the shop for 10 - 12 hours a day.

The legal representative asked how Ms Nivens had found running the shop since November 2017. She replied that it was fine and that she had not had any problems. The Police had visited the premises and had found everything to be in order.

In relation to training, Ms Nivens advised that she had contacted Mr Hodgson from D&B Licensing who had provided all staff with the relevant training.

#### Questions from the applicant

The applicant's legal representative was afforded the opportunity to ask questions of Ms Nivens and the following issues were raised:-

- Clarification was sought as to when Ms Nivens started working in the shop. Ms Nivens replied that she had previously 'popped in and out' of the shop and taken an interest.
- The applicant's legal representative asked Ms Nivens when she had become employed there. Ms Nivens replied October 2017.
- The legal representative asked how the arrangement worked and whether Ms Nivens had been employed at the premises since October 2017. Ms Nivens stated that she had a 5-10 year lease for the premises.
- Ms Nivens was asked who had provided her with the licensing conditions for the licence. Ms Nivens replied that she had completed a licensing course.
- Ms Nivens was asked who had provided her with Part A and B of the premises licence. Ms Nivens responded that the Council's Licensing Officers had provided this.
- The legal representative queried whether Ms Nivens knew what the conditions on the premises licence were in respect of the shop she was currently managing and she replied that she did. When asked if Mr Finnegan or Mr Pratt had provided her with a copy of that, Ms Nivens responded no.
- The legal representative stated that in October 2017 when PC Arbuckle, PC Price and Licensing Officers had visited the premises Perry had been on sale and that a warning had already been issued in respect of this breach. Ms Nivens stated that she was aware on 1 November 2017 that Perry was not allowed to be sold from the premises.
- The legal representative asked Ms Nivens whether she was working in the shop on 10 October 2017. Ms Nivens replied that she was only going into the shop and was not really working there at that time. She added that the posters had been put up by the staff and that nothing had been mentioned about the Perry.
- The legal representative asked Ms Nivens to clarify when she actually took over the management of the premises and noted that she had been helping out for six, seven or eight months prior to that. Ms Nivens confirmed she had taken over on 1 November 2017.
- The legal representative asked who the current manager of the premises was. Ms Nivens responded that she was. It was queried whether she had responsibility for the

- day to day running and purchasing and stocking of shelves, since 1 November 2017. Ms Nivens confirmed that this was the case.
- The legal representative queried who had arranged for staff to attend the training course. Ms Nivens stated that she had as she wanted to take over the business and make sure things were done properly. It was queried how this had been paid for and Ms Nivens advised it was subsidised from the shop takings.
  - The legal representative asked who was now able to operate the CCTV system. Ms Nivens responded that Gary and herself were both able to. When asked how long Ms Nivens had been made aware of using the system she responded not very long as it was quite difficult but that Gary was able to operate it straight away. Ms Nivens was asked whether it was fair to say that she would rather not have to operate the system and to let Gary do it as he was au-fait with it. Ms Nivens stated that this was the case.
  - The legal representative considered that there should be more than one person who was fully conversant with how to operate the system. Ms Nivens replied that it was not a busy shop and that they were able to contact Gary quickly.
  - When asked whether Gary was employed at the shop or whether he 'helped out', Ms Nivens stated that he helped out. The legal representative highlighted that the only person conversant in the use of the CCTV system was not employed by the shop. Mr Finnegan explained that Gary was employed by him as a maintenance person.
  - The legal representative stated that she wanted to be sure that there was someone who worked in the shop that knew how to operate the CCTV system. Ms Nivens stated that she worked in the shop and that it was only a small shop.
  - In response to a query regarding her working hours, Ms Nivens advised that she tended to work shifts of 7.00am till 5.00pm or 4.00pm till 10.00pm and that she was there most days. Ms Nivens was asked what the opening hours of the shop were to which she responded 7.00am and 8.00am on Sundays.
  - The legal representative queried whether the opening hours on the premises licence were incorrect as it stated 9.00am till 10.00pm daily. Ms Nivens responded that she thought it was 7.00am.
  - When asked if much of what happened within the shop was led by Premier, Ms Nivens stated that Premier sent the deliveries to the shop.

#### Questions to Ms Nivens

All parties were afforded the opportunity to ask questions of Ms Nivens and Members of the Committee raised the following issues:-

Reference was made to Ms Niven's comment that she had worked in retail for 20 years and she was asked in what capacity. Ms Nivens responded that she had worked behind the till but had never been a manager.

When asked what her relationship was with Mr Finnegan, Ms Nivens replied that he was her partner and that this was the reason that she used to go into the shop to help out and that she would go to the wholesalers.

It was queried whether Ms Nivens had gone to Bookers on a regular basis and purchased alcohol. She responded that she had. It was queried whether she was aware of the AWRS. Ms Nivens stated that she was now aware of it and had seen it advertised in Bookers.

A Member stated that since Ms Nivens became manager of the shop in November 2017, she had completed the required training and it was queried whether she was now fully aware of the conditions on the premises licence. Ms Nivens replied that she was aware of the conditions and that she, together with the other staff at the shop, would complete refresher training with Mr Hodgson every six months.

When asked whether she had any involvement in any other business, Ms Nivens replied that she did not.

The Council's legal representative sought clarification on the opening times of the shop and queried who looked after the shop when Ms Nivens was not present. Ms Nivens confirmed that the shop opened from 7.00am till 10.00pm daily and that another member of staff looked

after the shop when she was not there.

- The Council's legal representative noted that Ms Nivens had started working at the shop officially on 1 November 2017 and queried who paid her wages. Ms Nivens confirmed that Mr Finnegan paid her wages but that she was responsible for paying the wages of the other staff at the shop.
- The Council's legal representative queried who was responsible for any equipment that needed to be fixed or replacing. Ms Nivens stated that she was responsible and that Gary would fix things where possible. It was queried whether Ms Nivens could authorise payments for repairs/new equipment. She stated that she could and would use money from the till.
- In response to a query, Ms Nivens confirmed that a member of staff was running the shop today whilst she attended the Hearing.
- A Committee Member asked Ms Nivens whether she had worked in any other premises that sold alcohol. She replied that she had previously helped in her sister's pub.
- It was queried whether Ms Nivens lived near the premises. Ms Nivens advised that she lived above the shop. When asked if Mr Finnegan also lived there, Ms Nivens stated that Mr Finnegan lived elsewhere.
- Mr B Hodgson - D&B Licensing Consultants

The Premises Licence Holder's legal representative called upon Mr Hodgson of D&B Licensing Consultants and asked him to explain his involvement with the premises. Mr Hodgson stated that in October 2017 he had spoken with Mr Finnegan and Mr Pratt regarding the problems at the premises. He was initially asked to submit an application to transfer the Premises Licence as Mr Pratt had been dismissed and had been prevented from working in the premises. The application to transfer the licence to Mr Finnegan was submitted, however, Mr Finnegan became ill. Mr Hodgson stated that at this point he was then asked to make an application to transfer the Premises Licence to Ms Nivens. Ms Nivens asked Mr Hodgson to provide a training session, which he did.

The training included the sale of age restricted products. Mr Hodgson advised that he had a copy of his training manual available for inspection and added that things were now beginning to come under control at the premises.

#### Questions

All parties were afforded the opportunity ask questions of Mr Hodgson. Members of the Committee raised the following issues:-

- It was acknowledged that Mr Hodgson's assistance had been enlisted at the premises and it was queried whether he had found something amiss with the business. Mr Hodgson stated that Mr Pratt had been dismissed and he had provided training for Ms Nivens who had subsequently become the DPS.
- The Chair asked the Premises Licence Holder's legal representative to confirm when Mr Pratt was dismissed as this information had not been shared with the Committee. The legal representative confirmed that Mr Pratt was dismissed when the incident took place. Mr Finnegan stated that he asked Mr Pratt to leave.
- The Council's legal representative stated that Mr Pratt was still the Premises Licence Holder but that he was not allowed in the shop and asked since when had this been the case. Mr Finnegan replied that it was when he had realised what was going on, he was not sure exactly when. The Council's legal representative suggested that it might have been since June and queried whether Mr Finnegan had been running the shop since that time. Mr Finnegan confirmed that this was the case.
- The Council's legal representative asked Mr Hodgson whether he had trained the staff at the shop directly and, if so, how many he had trained. Mr Hodgson stated that he had trained all of the staff, on 11 December 2017 - nine in total including Ms Nivens.
- The Council's legal representative asked who was DPS at the premises following Mr Pratt's dismissal. Mr Hodgson responded that he did not know and that he had been called in to sort out the internal problems and to do the training in December.

- The Licensing Manager confirmed that on 29 November 2017 an application was made to transfer the DPS to Ms Nivens and also to transfer the premises licence to Ms Nivens. The Council's legal representative highlighted that Mr Finnegan had stated that from June 2017 Mr Pratt was not allowed in the premises, however the transfer applications were not made till November 2017.

### Summing Up

#### Applicant

The applicant's legal representative summed up by stating that parts of the review were confusing from the respondent's side. There was confusion as to who was in control of the premises and who was currently in control of the premises. The three parties were intrinsically linked as partners, business partners and friends. Mr Finnegan appeared to have exerted control over the premises and it was a concern as to whether that would continue as he was the partner of Ms Nivens. Mr Finnegan had been purchasing with no power to do so. Mr Pratt should have been purchasing. The Committee had been told that Mr Ward had been involved in the purchasing. It was suggested that the parties had all tried to shift responsibility and the premises had never been run properly and this had been an issue since 2003 when alcohol had been sold from the premises without authority and ought not to have been sold.

The parties were not aware of the conditions on the premises licence which posed the question who had talked Ms Nivens through the conditions or who would take responsibility for running the store properly. The parties had blamed staff members for stocking the shelves with Perry, which they were prohibited from selling.

The Committee was asked to consider whether it could be satisfied that the licensing objectives would be upheld with any of the parties in charge. It was submitted that the premises licence should be revoked due to the history at the premises, the fact that the parties were intrinsically linked and whether the licensing objectives would be upheld.

#### Premises Licence Holder

The Premises Licence Holder's legal representative summed up by stating the review hearing had failed to go ahead on two previous occasions and that during the time that had elapsed (four months) the premises was now being run properly. The Police had confirmed that everything was in order at the shop on their last inspection visit. All staff had now been trained.

The legal representative considered it to be less than fair to tar Ms Nivens with the same brush as she had only been at the premises a short time.

The legal representative stated that the definition of 'review' in the dictionary was "formal assessment instigating change is necessary". The Committee was asked to consider this review as a thorough assessment. It was accepted that the premises had not been run properly. There had been a failure to display Part A of the premises licence; Perry goods that had arrived with the delivery had been put on display; challenge 21 posters had not been displayed. Mr Pratt had been unable to keep a proper eye on the premises. It was highlighted that there was no evidence of failed test purchases. The majority of the incidents mentioned in the Police evidence occurred after the shop was closed. The premises was located in a challenging area. It was submitted that the fact the Police had not been called to the premises for trouble was very powerful.

It was accepted that there had been problems with the CCTV caused by the electricity box outside the premises but this had now been corrected. The CCTV at the premises had often been used to assist the Police with other matters and the store had been commended by the Police for this.

In relation to the 'white van man', it was accepted that it had not been a good idea to purchase from the van, however, it was BD Wholesale and an invoice had now been produced. The responsible authorities had been invited to look into this. Mr Pratt had admitted that they had purchased more than was seized, from the van. The legal representative considered it

irrelevant what had happened to BD Wholesalers - they had lost capacity to sell under the AWRS but the premises licence holder had not been aware of this.

The AWRS scheme came into effect on 1 April and the invoice was dated 18 April. The AWRS leaflet was not provided to the premises until 23 May. The Committee was asked to weigh up the evidence and was asked not to revoke the licence. He stated that the Committee could be satisfied that however badly the premises had been run in the past, since the review was initiated, everything had been put in order and Ms Nivens should be given the chance to run the store. He stated that the matter was too serious for a warning. Mr Pratt did not want to stay on at the store but because the Police had objected to the application to transfer the premises licence, he was effectively still in charge. The legal representative suggested that a suspension would be in order.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal and Democratic Services, withdrew whilst the Committee determined the review. The Council's legal representative stated that as it was likely for the debate and decision-making process to take some time, in accordance with the Regulations, the full decision and reasons would be issued to the parties within five working days.

The Chair advised all parties of the Right of Appeal to the Magistrates Court within 21 days of the decision.

### **DECISION**

That the Premises Licence in respect of MK Convenience, 31-33 Saltersgill Avenue, Middlesbrough, TS4 3LD, Ref: OL/18/05, be revoked for the following reasons:-

1. On 27 February 2018, the Committee considered an application to review a Premises Licence in the name of Keith Pratt in relation to the premises at 31-33 Saltersgill Avenue, Middlesbrough, known as MK Convenience ("the Premises") which authorises the off-sales of alcohol between 9.00am and 10.00pm daily.
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, it 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 (DPS); 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 License Holder ("the PLH"), the witnesses in support and his representative. It carefully considered the Act, Guidance, Policy and licensing objectives.

### **Decision**

5. The Committee decided that it was appropriate to revoke the Premises Licence in order to promote the prevention of crime and disorder and to promote public safety.

### **Considerations and Reasons**

6. The applicant and Responsible Authorities informed the Committee of various issues, including (but not limited to) the following in summary:

i) That criminality and irresponsible management had occurred at the Premises. During an inspection with Responsible Authorities and HMRC on 16 June 2017, HMRC seized alcohol

for which no duty had been paid. The alcohol seized had not been purchased from a registered approved wholesaler. That such acts amounted to criminal offences however could be dealt with through civil penalties. That a civil penalty for payment of the duty had been imposed and in addition a civil penalty in the sum of £200 had been imposed for wrongdoing.

ii) No invoices could be produced on the visit in relation to the alcohol. The alcohol had been purchased from a white van man. The production and transfer details of the alcohol could not be traced and, therefore, there could have been a risk that the alcohol was unsafe.

iii) Since the licence was granted to Mr Pratt, there had been continuous breaches of licensing conditions on the Premises Licence and that breaches of conditions and wrongdoing continued despite numerous warnings. The alcohol seized was high-strength, cheap alcohol and was considered high risk because it was attractive to problem drinkers who either caused harm to themselves or others or then go on to cause crime and disorder or anti-social behaviour.

iv) That the premises continued to sell high-strength, cheap alcohol (per unit).

v) That the premises was situated in an area subject to a special cumulative impact policy. Alcohol fuelled crime and disorder and anti-social behaviour was a serious problem in the area and alcohol harms were being caused to residents.

8. The Premises Licence Holder, his representative and witnesses informed the Committee of various matters including (but not limited to) the following in summary:

i) That neither the Premises Licence Holder nor staff at the premises knew at the time they should only purchase alcohol from a registered wholesaler from the 1 April 2017. That an invoice was produced giving details of the suppliers which had a VAT reference number. No direct information was received about the AWRS scheme coming into force by HMRC. The Council only informed businesses after the scheme came into force, in May. The business did not receive the information from the Council in May. The purchase was made very shortly after it came into force on 18 April 2017.

ii) That it was accepted that the Premises had been poorly run in the past and reasons were given by the PLH as to why standards had dropped due to personal circumstances, however, the problems had now been dealt with. A new DPS had been employed, staff had been trained and it was confirmed that at a recent visit in February 2018 the licence conditions were being complied with. The premises and the people in charge had been helpful to the Police and had assisted in solving crime in the area by the provision of CCTV footage. The PLH and staff had co-operated with HMRC and Responsible Authorities.

iii) That the building where the premises was situated was refurbished and had improved the area.

iv) That the staff who bought from the white van supplier had been sacked, the PLH would not be running the business and an application had been made to transfer the Licence to the DPS. The DPS had experience, knew the area and had ensured conditions had been complied with and they had not failed test purchases.

10. The Committee considered that alcohol on display at, and sold from the premises, had no duty paid nor was the alcohol purchased from a registered wholesaler. The applicant confirmed these were criminal offences. The business received a civil penalty to pay the duty of £458.00 and in addition, after considering the circumstances, HMRC issued a further penalty for wrongdoing in the sum of £200. Therefore, it considered that the Premises Licence Holder and other parties involved were failing to promote the prevention of crime and disorder.

11. The Committee considered that since the grant of the licence and the opening of the premises, the PLH and others purporting to be in charge breached or allowed others to breach the conditions on the Premises Licence throughout the licence since 2013. A breach of a condition on a licence was a criminal act and the promotion of the prevention of crime and disorder had not been upheld.

12. The Licensee claimed he thought the alcohol was legitimate because an invoice was provided. The Licensee also submitted that he was not informed and did not know that he was required to purchase from a wholesaler registered with HRMC from the 1 April 2017.

13. The Committee was concerned that the invoice was not available on the day of inspection and no-one in charge or staff knew where it was or if it existed. It was concerned that the invoice was sent on 30 November 2017 after the first date for the review hearing had been adjourned.

14. The Committee was also concerned that it was told at the hearing that the member of staff who purchased alcohol from the white van had done this before with the knowledge of the people who appeared to be in charge. It was concerned that the alcohol was purchased from the white van man because it was very cheap and because it was a type of alcohol that was not available at legitimate wholesalers (such as Karpackie Polish beer). It was seriously concerned that staff had bought from the white van after making enquiries to find out that it sold such alcohol as a result of customer requests. The Committee heard that this was high risk alcohol attractive to problem drinkers because of its very high strength and cheap price.

15. Despite claiming a belief that the alcohol was legitimate, it was clear to the Committee that a reasonable person would assume in the circumstances that the alcohol would not be legitimate. The invoice was clearly suspect because the prices were very cheap and were below prices alcohol could be sold with duty paid. The Committee was also concerned that the business named on the invoice, based in Birmingham, had been refused AWRS registration by HMRC because it was considered not fit and proper to sell alcohol wholesale to retailers.

16. The Committee was also seriously concerned that buying alcohol for sale to the public in such a manner could be a risk to public safety. Although the Licensee claimed the alcohol was traceable because of the invoice and the VAT registration number provided, there was no overall traceability which a retailer would achieve by buying from a legitimate wholesaler. A retailer buying alcohol in such circumstances was putting the public at risk because there was no assurance that the alcohol had been produced safely or not tampered with in transit.

17. HMRC confirmed information was supplied on the Government website and advertised generally to retailers that alcohol should be purchased from registered wholesalers and it was illegal not to do so. The Committee noted that a leaflet had been left at the premises by the Council explaining these requirements in May 2017 after the date the Licensee claimed the alcohol was purchased. The Committee considered responsible retailers would be aware of their responsibilities. In any event a responsible retailer would not purchase alcohol in the manner explained above.

18. The Committee could not determine who was in control of the premises. The owner of the building prevented the Licence Holder, who was also the DPS, from entering the building at some point after the visit in June 2017 and a new DPS was not appointed until the end of November 2017. During this period serious breaches of the Licence took place. The building owner authorised the purchase of alcohol.

19. The DPS appointed at the end of November 2017 revealed that she was involved with the building owner, she was not clear when she was appointed and she had helped out now and again when breaches took place. Before being appointed DPS she was involved in purchasing alcohol. The DPS said that on being employed as the manager no one in charge showed her the Licence or the conditions. The Committee considered the DPS's submissions were inconsistent and unclear.

20. The Committee considered that all parties linked with the premises at the hearing were intrinsically linked and all were involved in previous breaches of the licence conditions and the rules and regulations relating to licensing.

21. There had been continuous management issues which had resulted in the licensing objectives being seriously undermined. This was aggravated because the premises was

situated in an area which already suffered from serious alcohol related harms. The Committee considered that helping the Police with enquiries did not exonerate such serious and continued breaches.

22. Although a recent visit in February 2018, just a couple of weeks prior to this hearing, showed compliance with the Licence conditions, the Committee did not consider this was sufficient to ensure the licensing objectives would be upheld because of the history of breaches, disregard for the law and management failure. Breaches and a disregard for the law had continued for a sustained period despite numerous warnings and advice on compliance.

23. The Committee, therefore, did not consider that further conditions on the Licence would be complied with and that the people in charge or involved in the operation would continue to undermine the licensing objectives. After taking into consideration all the issues on the whole it was appropriate to revoke the licence in order to uphold the licensing objectives.