

**LICENSING SUB-COMMITTEE A**

A meeting of the Licensing Sub-Committee A was held on 14 June 2018.

**PRESENT:** Councillors J A Walker (Chair), T Higgins and L Lewis

**ALSO IN ATTENDANCE:** On Behalf of the Applicant:-  
S Upton - Principal Trading Standards Officer; J Cook; K Gibson; D Hull - Trading Standards  
J Watson - Risk & Resilience Manager, Children's Services  
F Helyer - Public Health  
Sergeant P Higgins; PC J Arbuckle; PCSO A Bennett - Cleveland Police  
A McGovern - Social Worker, Barnardos  
S Goldberg - Legal Representative

On Behalf of the Premises Licence Holder

S Singh - Premises Licence Holder  
Mr Panchal - Licensing Consultant  
D Craig - Legal Representative

**OFFICERS:** C Cunningham, J Dixon and S Wearing

**DECLARATIONS OF INTERESTS**

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

**18/1 EXCLUSION OF PRESS AND PUBLIC.**

The legal representative on behalf of the Responsible Authorities made an application under Regulation 14 of the Licensing Act (Hearings) Regulations 2005 that the press and public be excluded from the meeting due to ongoing proceedings in respect of the Premises Licence Holder to avoid his case being prejudiced.

The Premises Licence Holder's legal representative confirmed that he had no objection to the hearing being held in private.

All parties, other than the Members of the Sub Committee and officers from the Council's Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the application for the hearing to be held in private.

Subsequently, all parties returned to the meeting and the Chair announced the Committee's decision.

**ORDERED** that the press and public be excluded from the whole of the meeting as the Committee believed that the public interest in doing so outweighed the public interest in the hearing.

The Premises Licence Holder's legal representative informed the Sub Committee that he had with him a copy of the current incident and refusals books available for inspection. The Council's legal representative advised that, in accordance with the Regulations, the documents could be submitted if all parties were in agreement. It was confirmed that there were no objections from any of the parties to the documents being submitted.

**\*\* TWO MINUTES SILENCE**

Those present observed two minutes silence as a mark of respect for all those who lost their lives in the Grenfell Tower fire one year ago.

**18/2 LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE: BORO 24**

**HR SHOP, 293 LINTHORPE ROAD, MIDDLESBROUGH, TS1 4AP, REF NO: OL/18/10**

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 Boro 24 Hour Shop, 293 Linthorpe Road, Middlesbrough, TS1 4AP, Ref No. OL/18/10.

**Summary of Current Licensable Activities and Hours**

Sale of alcohol (off sales) – 8.00am to 11.00pm Monday to Sunday.

A copy of the current 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 S S Punyani, 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 Principal Licensing Officer presented the report outlining the application for review in respect of Boro 24 Hour Shop, 293 Linthorpe Road, Middlesbrough, Ref OL/18/10, made by Middlesbrough Council's Trading Standards Service. Concerns were also raised about the operation of the business in relation to the underage sales of restricted products by a Social Worker from Barnardos and by Cleveland Police.

Following receipt of intelligence regarding the sales of alcohol to children, Trading Standards carried out a test purchase exercise with two 15-year-old male volunteers on 17 June 2017. The volunteers were not asked for proof of age and were sold a four can pack of lager.

On 30 June 2017, PC Arbuckle attended the premises to seize the refusals register and incident book and requested training records which were not at the premises but produced at a later date. During the visit, PC Arbuckle noticed that the CCTV system installed at the premises was not switched on. Training records showed that members of staff that sold alcohol to the volunteers on 16 June 2017 had not received any training.

Following a multi-agency operation on 5 January 2018, concerns were raised by a Social Worker from Barnardos in relation to the sale of cigarettes. The Social Worker reported that a member of staff at the premises had confirmed that he would be willing to sell cigarettes to children as young as 8 or 9 providing they rang their parents from the premises to get permission for the sale to take place.

On 13 January 2018 a PCSO visited the premises and suspected that an underage sale of an age restricted product would have taken place had he not been present.

A copy of the application for review submitted by the 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 (25 April 2018) - Appendix 3 plus further supporting documents at 3a.
- Cleveland Police (26 April 2018) - Appendix 4 plus a witness statement from Sergeant Higgins and incident reports at 4a.
- Children's Services (27 April 2018) - Appendix 5.
- In response to the representations, the Premises Licence Holder submitted a letter, dated 13 May 2018, regarding staff training - Appendix 6.

By way of background, the Committee was advised that the premises had operated with the benefit of a Premises Licence since 12 January 2007. Mr Surjit Singh Punyani had held the licence since 29 April 2013 following a transfer application made at that time. He had been the named Designated Premises Supervisor since 29 July 2013.

The submitted report also referred to the relevant sections of the Council's Licensing Policy and relevant sections of the Government Guidance to the Licensing Act 2003.

### **Applicant in Attendance**

The applicant's legal representative presented the case in support of the application to review the premises licence in respect of Boro 24 Hour Shop, 293 Linthorpe Road, Middlesbrough. The application for review was submitted by Trading Standards and supported by Public Health, Cleveland Police and Children's Services due to serious concerns regarding the premises.

Trading Standards submitted its application on the grounds that the prevention of crime and disorder and the protection of children from harm licensing objectives were not being upheld at the premises following the sales of age restricted products to children under the age of 18. There had also been failures by the Premises Licence Holder in relation to the operation of CCTV and maintenance of a refusals book and training records.

The applicant's legal representative advised that he would call upon the Principal Trading Standards Officer first, followed by the witnesses:-

- J Watson, Children's Services
- J Cook, Trading Standards
- D Hull, Trading Standards
- K Gibson, Trading Standards
- PC Arbuckle, Cleveland Police
- F Helyer, Public Health
- PCSO A Bennett, Cleveland Police
- Sergeant Higgins, Cleveland Police

### **Trading Standards**

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

The Officer stated that the application for review was made based serious concerns regarding the operation of the premises, particularly in relation the business being involved in activities that breached criminal legislation.

Further concerns were raised by Barnardos following a visit from a Social Worker to the premises as part of 'Operation Staysafe', a multi-agency operation to safeguard vulnerable young people; and by Cleveland Police.

Trading Standards had evidence that the business operator was not complying with two areas of the law - supply of alcohol to persons under the age of 18; and sale of cigarettes to persons under the age of 18.

The Principal Trading Standards Officer stated that it was her opinion that the licensing objectives of the prevention of crime and disorder and the protection of children from harm were not being upheld and that the premises was not operating in a responsible, compliant manner.

The application for review submitted by Trading Standards included supporting witness statements from

1. J Cook, Trading Standards Enforcement Officer, regarding the sale and digital photos of:-

- The refusals log (JC1)
- Cans of lager in the shop (JC2)
- Cans of lager in a red crate (JC3)
- Under '25' poster (JC4)

Information was provided in relation to the following:-

- Receipt of intelligence regarding underage sales of alcohol.
- A test purchase exercise carried out on 16 June 2017 with two 15-year-old volunteers.
- Details of the successful test purchase. In addition, photographs were attached at JC1, JC2, JC3, JC4 and JC5, showing the alcohol purchased by the volunteers.

2. PC Arbuckle, Cleveland Police, regarding his visit to the premises on 30 June 2017.

Information was provided in relation to:-

- The CCTV system at the premises being switched off.
- The Premises Licence Holder being unable to operate the CCTV system
- Seizure of the refusal book and incident book - attached as JSA1 and JSA2 respectively.
- Training records were requested, however, the Premises Licence Holder advised that they were not kept at the store. He later produced them on 12 July 2017 and a copy was attached at JSA3.

3. D Hull, Trading Standards Officer. Details of the test purchase operation were provided, including details of the two test purchase volunteers, including photographs of the volunteers, attached at DHU1/UAS, DHU2/UAS, DHU3/UAS and DHU4/UAS.

4. K Gibson, Trading Standards Enforcement Officer. Details provided in relation to the test purchase operation, including briefing of the volunteers and actual test purchase operation carried out on 16 June 2017.

- Photograph of lager purchased by the volunteers at the premises - attached as KGI/1 and KGI/2.
- KGI/3 - interview between K Gibson, J Cook and Premises Licence Holder on 10 August 2017.
- KGI/4 - interview between K Gibson, J Cook and Premises Licence Holder on 14 September 2017.

5. A McGovern, Barnados. Information provided in relation to:-

- Visit to the premises on 5 January 2018 in relation to Operation Staysafe.
- The employee at the premises was asked to display a poster - "In the Wrong Hands".
- Whilst speaking to the employee, the officer was told that they regularly had eight and nine year olds in the shop asking to buy cigarettes. The employee had stated that he tells the children to ring their parents and if they say it is ok he can sell them the cigarettes.

6. A Bennett, Police Community Support Officer, provided a statement regarding his visit to the premises on 13 January 2018 when he noted a number of youths in the area. When entering the premises PCSO Bennett noted the sales assistant acting suspiciously with a youth (approximately 15 years old) in the shop and believed that the sales assistant had intended to sell either alcohol or cigarettes to the youth and that his presence had prevented a sale taking place.

Each of the witnesses present on behalf of the applicant, provided confirmation of their respective statements and provided information in support of the application to review.

In addition, video footage of the test purchase operation was shown to the Committee. It showed the two 15 year old male volunteers confirming their names and their height being measured. They were then briefed at the Trading Standards Office before departing for the test purchase operation at the premises.

## Questions

All parties were afforded the opportunity to ask questions of the applicant and witnesses which were responded to accordingly.

## **\*\* ADJOURNMENT**

Having heard all the evidence from the applicant and its witnesses, the meeting adjourned at 1.05pm until 1.50pm.

## **\*\* RECONVENED MEETING**

The meeting reconvened at 1.50pm.

### Premises Licence Holder

The Premises Licence Holder's legal representative presented the case on behalf of the premises licence holder.

The legal representative acknowledged that the current conditions on the premises licence were insufficient but did not consider the applicant's desire to revoke the licence to be a proportionate step.

The legal representative made reference to the Section 182 guidance and urged the Committee to consider adding further conditions to the licence that were comprehensive, targeted and appropriate, and to remove some of the existing licence conditions.

It was also suggested that a further step available to the Committee would be to suspend the licence for a period of up to three months in order for the premises to fully address and rectify the concerns raised by the applicant. Having spoken to the Licensing Consultant working with the Premises Licence Holder, his opinion was that a suspension period of one week would be sufficient in order to achieve full compliance.

The legal representative stated that three principal events had given rise to the application to review and outlined each one and provided mitigation.

The legal representative invited Mr Panchal, Licensing Consultant, to address the Committee in relation to training.

The Licensing Consultant provided details of his background; the services offered by his Company; and the training programme provided to the Premises Licence Holder. He confirmed that he was approached by the Premises Licence Holder in September 2017 and ensured that appropriate training was delivered. Both the legal representative and licensing consultant responded to questions from all parties.

## Summing Up

Both parties summed up their respective cases.

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 the Boro 24 Hour Shop, 293 Linthorpe Road,

Middlesbrough, TS1 4AP, Ref: OL/18/10, be revoked for the following reasons:-

1. On 14 June 2018, the Committee considered an application to review the Premises Licence in relation to Boro 24 Hour Shop at 293 Linthorpe Road Middlesbrough, TS1 4AP ("the Premises") which authorised the off sales of alcohol between 8.00am and 11.00pm daily. The Premises Licence Holder and the Designated Premises Supervisor was Mr Surjit Singh Punyani ("the PLH").

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

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

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

4. The applicant and the Responsible Authorities informed the committee of, in summary (but not limited to) the following matters:-

5. That there has been a serious problem with the Premises and had been historical concerns since 2013, shortly after the PLH took over the Premises. A sale of alcohol was made to two 15 year old boys in June 2017. The boys clearly looked 15 and they were not questioned. The test purchase was undertaken following various forms of intelligence that underage sales were taking place at the Premises. That after the test purchase, in January 2018 the person behind the counter told a social worker that cigarettes would be sold to children as young as 8 or 9 if their parents consented. That gangs of youths were hanging around the store and a PCSO considered he had prevented a further underage sale in January 2018. There had been a proxy sale to an adult who was a problem drinker who gave alcohol, outside of the shop, to two 14 year old children in February 2017. That there has been an ongoing problem with youths hanging around the Premises because they know or believe they will be sold restricted products. The Premises failed to maintain CCTV or comply with other conditions on the licence. The Premises Licence Holder could not comply with the few simple conditions already on the Licence despite being given previous advice, warnings and a caution for breaching conditions.

6. The Premises Licence Holder and his representatives informed the Committee in summary (but not limited to) of the following:

7. That the conditions on the licence are out of date and a suite of targeted conditions - 23 in total - had been proposed by the PLH. These address the objectives and include proof of age schemes, CCTV, clear training and records amongst others. The PLH disputed that CCTV was not switched on during the visit on the 30 June 2018. The Premises Licence holder disputed that a staff member would openly admit to the authorities that cigarettes would be sold to children as young as 8 or 9 and that the social worker must have been mistaken. That the incident in June with the PCSO was only opinion and the member of staff closed the shop to stop youths gathering. That there had only been one positive test purchase since 2013. That the PLH has received detailed targeted training prior to the review hearing in order to implement and comply with the proposed conditions.

## **DECISION**

8. The Committee decided it was appropriate to revoke the Premises Licence to promote the prevention of crime and disorder and to protect children from harm.

## **REASONS**

9. Although the Committee noted there had only been one positive test purchase on, 16 June 2017, the Committee considered that selling alcohol to children aged 15 was serious and

poses a very serious risk to children. The Committee viewed the video of the volunteers and considered they were clearly underage. The Committee was satisfied an underage sale had taken place. The Committee takes any underage sale very seriously as Middlesbrough has a serious problem of alcohol harms to children and youths. In 2014/2015 Middlesbrough was the 6th highest ranking in the North East for alcohol specific hospital admissions for under 18s, with the North East being the highest in the Country. Out of 326 Local Authority areas, Middlesbrough is ranked 13th for alcohol related mortality generally. In addition a significantly high number of young teenagers in Middlesbrough stated they had drunk alcohol. Selling alcohol to children and youths under 18 is a criminal offence. It is generally known that children and youths who consume alcohol may go on to cause anti-social behaviour in the area. The area is already one that suffers from extremely high alcohol related crime and disorder and anti-social behaviour and is one of the most deprived wards in Middlesbrough. 10. The Committee was concerned with the reaction of the PLH following the positive test purchase. In the PACE interview he told officers that the volunteers in the photographs were different to those from the photo he had taken from the CCTV and that Trading Standards may have sent different people. The Committee was seriously concerned that the PLH had told the police prior to the PACE interview that the CCTV was not working at the time of the test purchase and was therefore unavailable. The Committee was seriously concerned the PLH lied to the Police or lied during his interview.

11. Although the committee noted there had only been one positive test purchase in June 2017, looking at the information on the whole, the committee believed that the Premises had sold alcohol or restricted products to underage children in the past or at the very least has a reputation for selling such products to children under 18 and not checking ID. There was intelligence that underage sales were taking place was from various different sources and over a period of time. Gangs of youths, including youths from outside of the area would often hang around outside of the shop. In addition to alcohol harms to children, the Responsible Authorities had received intelligence that the area is frequented by children who could be vulnerable to exploitation and one such vulnerable child attends the shop. This being a shop with a reputation, intelligence and a positive test purchase for underage sales.

12. In February 2017, prior to the test purchase, the shop made a proxy sale to a woman who was a problem drinker who then gave the alcohol she had purchased to two 14 year old youths outside of the shop. The Committee considered that a responsible retailer, who knew there was a problem with children gathering outside of the shop, with appropriate CCTV outside of the frontage of the shop and being alert to the problem, would have been able to prevent such a proxy sale.

13. After the positive test purchase, on the 5 January 2018, as part of an operation 'Stay Safe' because of the risks to children around Linthorpe Road, a social worker had a conversation with a Member of staff in the shop. The Social Worker was clear in that the member of staff told him the shop regularly gets children as young as 8 and 9 in to buy cigarettes. The member of staff explained to the Social worker that he told the children they were too young to buy cigarettes but he tells them to ring their parents and if the parents say it's ok he can give them cigarettes. The PLH confirmed the member of staff was Nirjeet Singh, who was the same member of staff who sold alcohol to the underage volunteers. The PLH stated that the Social Worker must have been mistaken because Nirjeet Singh would not have said this to the authorities. However, the Committee believed the Social Worker and it appeared to be part of a conversation about children's behaviour in this Country. He was clear that he had not been mistaken and the PLH chose not to bring Mr Singh to the hearing to support this allegation.

14. A week later on the 13 January 2018 a Police Community Support Officer saw teenagers outside of the shop. He considered that the member of staff behind the counter was acting suspiciously with a youth that looked 15 years old, was attempting to hide something behind the Counter and pointed at the officer. The Officer confirmed the youth became edgy when he saw the Officer. The member of staff then locked the door of the shop when the youth and officer had left. Although the PLH submitted there was no direct evidence that anything unlawful occurred at the shop, the Committee did consider that the PCSO had 12 years' experience in that particular area and was aware of its problems. The PLH confirmed the member of staff was again Nirjeet Singh who did not attend the hearing. It also did consider that despite all previous problems at the Premises youths were still hanging around the Premises and an experienced officer considered that the activities of the member of staff to be very suspicious. Considering this as a whole, with all of the other information, the Committee considered that the Premises was still having problems with youths and its reputation for underage sales.

15. The PLH claimed that he had trained Mr Singh, but no such training was detailed in the training records.
16. The Premises were subject to a mandatory proof of age scheme that any person who appears to be under the age of 18 must produce ID bearing their photograph, date of birth and holographic mark. The proof of age scheme in the shop has been inadequate, there were either no notices previously or a hand written note on a piece of paper at the counter. At the time of the test purchase there was one formal notice displayed stating the shop would operate a challenge 25 policy. This clearly was not the case and any proof of age policy was non-existent or wholly inadequate.
17. The problems at the shop are not limited to youths gathering or underage sales. Since the grant of the Licence in 2013 there have been numerous breaches of the conditions on the Premises Licence and irresponsible trading. A breach of condition is in itself a criminal offence.
16. Shortly after the Licence was granted, in September 2013 after receiving intelligence, the police visited the Premises and found conditions being breached including the CCTV not working, Perry products on sale, no refusals book and Part B of the Licence was not being displayed. These were considered simple conditions and easy to comply with, however, they were being breached within four months of the licence being granted. The PLH received advice on complying with conditions and a warning.
17. Despite receiving advice and a warning during a visit in February 2014 staff could not operate the CCTV and there were no notices about a proof of age scheme. A letter was sent giving advice and a warning.
18. In November 2014, again Perry products were on sale, the CCTV was not recording for the required period, there were no notices of a proof of age scheme and no staff training records. Advice and a warning was given.
19. In May 2018, Part A of the Premises Licence was not on the Premises, staff training records and the proof of age policy were inadequate. Again advice was given.
20. Despite continued breaches and irresponsible practices, being given advice, warnings and even after the very serious incident of the test purchase on the 16 June 2017, conditions were still being breached two weeks later on the 30 June 2017. The CCTV was not recording and therefore the police were informed footage was not available for the incident on the 16 June. The police officer also confirmed the CCTV was switched off at the time of his visit. This was denied by the PLH but the Committee had no reason to doubt the police officer who was clear that it was switched off.
21. Despite advice, warnings and a caution problems continued at the Premises. In some instances the PLH reported incidents of youths hanging around causing problems, but the Committee considered the systematic failure of management was undermining the objectives.
22. The PLH told the Committee that with new training provided by a known Licensing Consultant, the raft of new targeted conditions would be complied with. However, the Committee considered that the PLH, who was also the DPS, would have had to have knowledge to qualify as a Personal Licence Holder and he was an experienced PLH because he had another Premises. The Committee considered the current limited conditions on the Licence were easy to comply with, yet the PLH continually breached them. The Committee did not consider that an additional raft of 23 conditions would result in compliance. The Committee was also seriously concerned that the PLH had breached the conditions on his other premises licence at Cumberland Road. During visits on the 30 June 2017 and the 12 July 2017 conditions on that licence were being breached including Perry products on sale, CCTV not recording for the required period and no staff training records. This was despite the PLH confirming he had received previous training by consultants. A caution was given in respect of these breaches in August 2017.
23. The Committee considered a suspension of the licence for a short period as a deterrent and time to put in place the proposed conditions to be wholly inappropriate. Any potential benefit of a convenience store for the PLH or the area is considered to be wholly outweighed by the problems that have occurred at the Premises and the risk to young people. The PLH had continually breached a small number of conditions which are easily complied with despite advice and warnings. He has breached conditions on other Premises Licences despite receiving training. There are varied sources of intelligence that the shop sells restricted products and alcohol to children under 18. It has a reputation for underage sales. It sold alcohol to two 15 year old boys and crimes have occurred at the Premises. The Premises are in an area that has serious alcohol related problems and has been ran wholly irresponsibly by the PLH.



24. Therefore, in accordance with the Act, Guidance and Policy and in order to promote the prevention of crime and disorder and to protect children from harm the Committee decided it must revoke the Premises Licence to sell alcohol off the Premises.

The Premises Licence Holder was advised that he had the Right of Appeal to the Magistrates Court within 21 days of the date of the decision.