

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 25 April 2019.

PRESENT: Councillors J A Walker (Chair), R Arundale and T Higgins

PRESENT AS OBSERVERS: F Bullock - Legal Services

ALSO IN ATTENDANCE: On behalf of the Applicant:-
Sergeant P Higgins - Cleveland Police
L Wilson - Cleveland Police Legal Representative
F Helyer - Public Health

OFFICERS: C Cunningham, J Dixon, T Hodgkinson

DECLARATIONS OF INTERESTS

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

18/11 EXCLUSION OF THE PRESS AND PUBLIC

ORDERED that pursuant to Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005, the press and public be excluded from hearing as the Committee considered the public interest in doing so outweighed the public interest in the hearing taking place in public. Any party and any person assisting or representing a party may be treated as a member of the public.

18/12 LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - LORD BYRON, 20-22 BRIDGE STREET, MIDDLESBROUGH

It was confirmed by the Licensing Officer and Sergeant Higgins that both Premises Licence Holders had advised that they would not be in attendance at the Hearing and that the Hearing should proceed in their absence. Neither party had submitted any written representations to be considered by the Committee.

DECISION - FULL REVIEW HEARING

ORDERED that the Premises Licence in respect of the Lord Byron, 20-22 Bridge Street, Middlesbrough, be revoked, as follows:-

1. The Committee considered an application to review a Premises Licence under Section 53C of the Act in relation to the Premises at a hearing on the 25 April 2019.
2. The Committee noted, under Section 53C of the Act, it must hold a hearing to consider the application for review and any relevant representations and to take such steps as set out in the following paragraph (if any) as it considers appropriate to promote the licensing objectives.
The Steps were: the modification of the conditions on the licence; the exclusion of a licensable activity from the scope of the licence; the removal of the Designated Premises Supervisor; the suspension of the licence for a period not exceeding three months; or the revocation of the licence.
3. The Premises Licence Holders were not present at the hearing. Mr G had previously stated he no longer had any dealings with the premises, however, he remained named on the Licence. Mr J was present at the hearing on 5 April 2019 when the Committee considered imposing interim steps under Section 53B of the Act. However, Mr J had informed the police and the Licensing Office that he would not be attending the hearing.
4. The Committee, therefore, considered it appropriate to proceed with the Hearing in the absence of the Premises Licence Holders under Regulation 20 of the Licensing Act

(Hearings) Regulations 2005 and in view that the full review hearing must take place within 28 days from the date the police certificate for the summary review was received. It was confirmed that the Premises Licence Holders had not made any representations other than the verbal representations made at Committee on 5 April 2019.

5. The Committee carefully considered: the review on its own merits; the application for review, report and appendices and the representations. It considered relevant parts of the 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, namely in this case, the promotion of:-
 - the protection of children from harm
 - public safety, and
 - prevention of crime and disorder

Decision

6. The Committee decided it was appropriate to revoke the Premises Licence in order to promote the prevention of crime and disorder, public safety, and the protection of children from harm.

The reasons for the decision were as follows:-

7. The Guidance stated that criminal activity involving the sale and distribution of drugs or the illegal purchase and consumption of alcohol by minors which impacts on the wellbeing of young people should be treated particularly seriously. The Guidance stated that where the licensing authority determined that the crime prevention objective is being undermined through premises being used to further crime, it was expected that revocation should be seriously considered, even in the first instance. The Guidance stated where premises were found to be trading irresponsibly the licensing authority should not hesitate, where it was appropriate to do so, to take tough action to tackle the problems at the premises and where other measures were deemed insufficient to revoke the licence.

8. The Premises operated as a pub selling alcohol from 10am until 2.00am with off sales between 10am and 10pm daily, and an alcohol delivery service from 10.00pm until 8.00am. Other licensable activities were permitted such as late night refreshment and entertainment.

9. The Premises was situated on the edge of the Town Centre on the main thoroughfare to Middlesbrough College and the Football Stadium. There were approximately 2,600 students under the age of 18 that attended the college and most would pass the thoroughfare where the Premises was prominently situated. The Premises was situated on a route favoured by away football fans heading to and from the railway station.

10. The Premises was situated on the very edge of a cumulative impact policy area for on and off sales but was situated within the cumulative impact policy area for off sales. It was situated in Central Ward which in 2015/2016 had the highest number of alcohol attributable admissions to James Cook Hospital. It was within an area of a high density of licensed premises, high levels of alcohol related crime and disorder and anti-social behaviour. It was an area that suffered from alcohol harms including anti-social behaviour in relation to minors. There was also a serious issue in Middlesbrough of "pre-loading" and the availability of cheap alcohol. It was considered that a delivery service may make it even easier for those who were vulnerable, eg alcohol dependents, young people, pre-loaders to access alcohol. Such services can deliver to other problem areas inside and outside of the District which suffer from saturation of off-sale premises and serious alcohol harms.

11. The Committee acknowledged that a cumulative impact policy cannot be a basis to revoke a premises licence. However, it does expect Premises Licence Holders of Premises in such a sensitive area and delivery services to operate lawfully and responsibly.

12. On 2 April 2019 the Police seized a quantity drugs believed to be cocaine and cannabis from the Tenant, the person allegedly running the Premises. The Premises were searched and a 1kg bag of drugs believed to be cannabis was found in a room marked "Staff Only".

The drugs found on the Premises had the same distinctive packaging as the drugs seized from the Tenant. Grip seal bags were also found on the Premises which were used for the distribution of smaller amounts of drugs. The Committee considered that it was likely the operation of the Premises facilitated the distribution of drugs. The Premises were associated with serious crime involving drugs. The Committee considered it very serious when drugs were found on a Licensed Premises and/or associated with Licensed Premises because of the links between use and distribution of drugs in its night time economy where alcohol is sold.

13. There were additional serious problems at the Premises and in relation to the alcohol delivery service over a long period of time.

14. On 1 December 2015, customers were drinking outside of the Premises and a speaker was playing music, this was despite a clear condition prohibiting customers from drinking outside on football match days and a warning given by the police a couple of hours earlier. The prohibition was particularly imposed because the Premises was situated in an area which was a flash point for disorder with opposing fans. The Premises continued to breach this condition on 9 January 2016 and 6 February 2016. During each visit to the Premises, neither the Premises Licence Holder nor the Designated Premises Supervisor were present.

15. On 6 February 2016 a police officer witnessed two youths aged 17 drinking outside of the Premises. More recently on 30 March 2019 a complaint had been received from a member of the public that underage drinkers were in the Premises. Both of these occasions were on match days. The seriousness was aggravated in view of the location of the Premises on the thoroughfare to Middlesbrough College and to Middlesbrough Football Ground which attracts youths and families.

16. On both of these occasions CCTV was not available. When the police searched the Premises on 2 April 2019 and found drugs the CCTV was actually unplugged. These were clear serious breaches of the conditions on the licence.

17. The Designated Premises Supervisor had previously informed the Licensing Office that she had left the Premises in June 2017 and believed she was no longer the Designated Premises Supervisor from that time. The Premises Licence Holder confirmed this at the previous Committee hearing, therefore, with the Premises Licence Holder's knowledge, there was no DPS in day to day management of the Premises for approximately 22 months. It was unlawful to sell alcohol without a Designated Premises Supervisor therefore the sales since June 2017 appear to have been unlawful.

18. The Premises Licence Holder applied to vary the Licence which was heard by a Committee on 9 May 2016. The variation was to provide an alcohol delivery service from the Premises from 10.00pm until 8.00am daily. As a result of the assurances given by the Premises Licence Holder to the Responsible Authorities, who withdrew their objections, and also later at the hearing to the Committee that the service would be run responsibly in compliance with a large number of conditions, the variation was granted. The conditions were imposed to protect the public and to ensure the delivery service would not undermine the objectives.

19. However, at the hearing on 5 April 2019, Mr J confirmed he had been running the delivery side of the business for over a year but was not aware of the extensive conditions that applied to the delivery service to ensure it operated within the law and responsibly. He was operating the service unlawfully without a Designated Premises Supervisor. The service was to be operated and managed by a personal licence holder because of the risks involved, this along with the other conditions that related to that service had not been complied with and ignored for a long period. It was of very serious concern to the Committee that the delivery service was operating from Premises associated with drugs and in breach of the restrictions and conditions that applied to that service.

20. The Committee considered the advertising and promotion of the delivery service, called "Bootleggers", "being the best and cheapest delivery service in Middlesbrough" and slogans like "Fucked up Fridays" and "Smashed Saturdays" which showed a total disregard for responsible trading.

21. Allowing the sale of alcohol to minors was a criminal offence, selling alcohol in breach of a condition or conditions on the licence was a criminal offence, and selling alcohol without a Designated Premises Supervisor was a criminal offence. The Committee considered in addition to the premises being associated with serious crime involving drugs, the Premises had been operated unlawfully for a long period wholly undermining, the promotion of the prevention of crime and disorder, the protection of children from harm and public safety. This was considered to be attributable to the Premises Licence Holders. One Premises Licence Holder, although claiming he was not involved in the Premises was still named on the Premises Licence and had failed to take any steps to ensure compliance nor had he taken any steps to remove himself from the Licence. The other Premises Licence Holder confirmed he was the Premises Licence holder operating the Premises, and the Committee considered was complicit in the unlawful operation.

22. The Premises Licence Holder claimed he did not know the Tenant and the Premises was sub let through advertising. However, the Committee considered the Premises Licence Holder misled it because information showed that the Premises Licence Holder was previously associated with the Tenant and his activities.

23. The Premises Licence Holder previously told the Committee he had removed the Tenant, however, the Committee was unaware whether the Tenant had any rights to remain in the premises under the terms of an alleged lease. Also the Premises Licence Holder had misled the Committee because he was previously associated with the Tenant.

24. The Premises Licence Holder previously informed the Committee that he had simply sub-let the Premises to different people without making any checks whether the Tenants would be, or were able to, comply with the Licence or uphold the objectives. The Premises Licence Holder himself had no knowledge of his responsibility under the Premises Licence to ensure compliance. The Committee considered this to be wholly irresponsible.

25. The Premises had traded unlawfully for a long period. The Committee considered the Premises Licence Holders held the Licence since 2010, which included an alcohol delivery service since 2016 and should have been aware of the responsibilities that attach to the sale of alcohol throughout this period.

26. The Committee considered the Premises Licence Holders had purposely, negligently or recklessly traded or allowed the Premises to trade irresponsibly and unlawfully over a long period and whilst the Premises was associated with serious crime involving drugs in an area that already suffers from crime and disorder and alcohol harms. The Guidance stated that criminal activity involving the sale and distribution of drugs or the illegal purchase and consumption of alcohol by minors which impacts on the wellbeing of young people should be treated particularly seriously. The Guidance stated that where the licensing authority determines that the crime prevention objective is being undermined through premises being used to further crime, it is expected that revocation should be seriously considered, even in the first instance. The Guidance stated where premises are found to be trading irresponsibly the licensing authority should not hesitate, where it is appropriate to do so, to take tough action to tackle the problems at the premises and where other measures are deemed insufficient to revoke the licence.

27. No alternative steps would be adequate, the objectives had been seriously undermined by the Premises Licence Holders for a long period. The Committee considered the operation at the Premises added to the crime and disorder at the Premises and was a risk to public safety and young people. Conditions would not be sufficient because of lack of compliance, it was the overall running of the Premises not the appointment of the DPS which is the issue, the main element of the operation was the sale of alcohol, a suspension would not be sufficient in view of the unlawful operation. Therefore in accordance with Guidance and its Policy the Committee had decided to revoke the Premises Licence. There were no good reasons to depart from the Guidance or its Policy.

Appeal

28. An appeal against this decision can be made to the Teesside Magistrates Court, Teesside Justices Centre, Victoria Square Middlesbrough, within 21 days of the Parties being informed of the Committee's decision.

DECISION - REVIEW OF INTERIM STEPS

On 25 April 2019 a Hearing Review of Interim Steps under Section 53D of Licensing Act 2003 ("the Act") was held in respect of the Lord Bryon, 20-22 Bridge Street, Middlesbrough ("the Premises").

1. The Committee considered an Application to Review a Premises Licence under Section 53C of the Act in relation to the Premises at a hearing on 25 April 2019.
 2. The Committee decided to revoke the Premises Licence for the reasons previously set out.
 3. In accordance with Section 53D of the Act, the Committee must review and consider whether the interim steps imposed under Section 53B of the Act on 5 April 2019 were appropriate for the promotion of the licensing objectives and consider any relevant representations and determine whether to withdraw or modify the interim steps taken.
 4. At a hearing on 5 April 2019 the Committee imposed the following interim steps: To suspend the whole of the Premises Licence and to remove the Designated Premises Supervisor.
 5. The Committee noted under Section 53D(3) it had the power to take any of the following interim steps (following a review of the previous steps imposed on 5 April 2019):-
 - (a) The modifications of the conditions on the premises licence
 - (b) The exclusion of the sale of alcohol by retail from the scope of the licence
 - (c) The removal of the designated premises supervisor from the licence
 - (d) The suspension of the licence.
 6. The Committee considered all of the information at the hearing and the representations made by the Police and Public Health in relation to the review of the interim steps. It noted no additional representations had been received from the Premises Licence Holders other than the verbal representations made at the Committee hearing on 5 April 2019.
 7. The Committee considered the Guidance and the Licensing Objectives.
- Decision
8. The Committee decided to impose the following interim steps under Section 53D of the Act
 - a) The removal of the Designated Premises Supervisor from the Licence
 - b) The suspension of the Licence.
 9. The interim steps set out in paragraph 8 will apply until the expiration of 21 days from receipt of the decision to revoke the licence, or if that decision is appealed, the date the appeal is disposed of.
- Reasons
10. The Reasons for the decision to impose the interim steps were as follows:-
 11. The reasons stated for the imposition of the steps on 5 April 2019.
 12. The Committee considered the further information presented at the hearing, which is set out in the reasons for the revocation, showing that the problems at the premises are more serious than considered at the hearing on 5 April 2019.
 13. The Committee was seriously concerned that the Premises has operated unlawfully for a long period as explained in the decision for the revocation of the licence.
 14. The Committee was seriously concerned that the Premises was associated with serious crime involving drugs.
 15. The Premises Licence Holder mislead the Committee as to his association with the Tenant of the Premises.
 16. Neither Premises Licence holder appeared at the hearing of the review of the Premises Licence.
 17. The Committee had no trust or confidence in the Premises Licence Holders as evidenced by the continued failures to operate lawfully, acknowledge or understand responsibility.
 18. The Premises Licence Holders undermined the objectives irrespective of whether they engage a Designated Premises Supervisor.

19. The Premises Licence Holders had been complicit in the Premises facilitating crime.
 20. Premises selling alcohol and/or a delivery service can be a tool to deal in illicit substances.
 21. The Premises was situated in a sensitive area frequented by youths and football fans. It was an area already suffering from very high levels of alcohol related harms.
 22. The interim steps were necessary to avoid any further detriment to the public and the prevention of crime and disorder, protection of children from harm and public safety.
 23. Right of Appeal Against Interim Steps Imposed Under S53D
 24. A Premises Licence Holder or the Chief of Police may appeal against its decision to review and impose the Interim Steps.
 25. An appeal must be made within 21 days of the Premises Licence Holder or the Chief of Police being informed of the decision
- If an Appeal was lodged, the appeal against the interim steps must be heard within 28 days from the date that the appeal was lodged.